



U.S. DEPARTMENT OF

ENERGY

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For Immediate Release
April 1, 2011



DOE Issues Draft Request for Proposals Seeking Contractor to Manage, Operate Waste Isolation Pilot Plant

Cincinnati -- The U.S. Department of Energy (DOE) issued a Draft Request for Proposal (RFP) seeking a management and operations contractor to maintain the Waste Isolation Pilot Plan (WIPP) and manage the DOE National Transuranic Waste (TRU) Program in Carlsbad, New Mexico. The estimated value of the anticipated contract is from \$130 to \$160 million per year, for five years, with an option to extend the contract for an additional five years. DOE anticipates awarding a competitive, cost-plus-award-fee contract during 2012.

The overall mission of the WIPP and the National TRU program is to protect human health and the environment by safe management, retrieval, characterization, and disposal of defense-related wastes. The WIPP includes surface facilities and a geological repository located 2150 feet below the surface. TRU waste is placed in the geological repository for permanent storage.

Contract services will include the following:

- WIPP Disposal Operations – Receive and dispose of TRU waste
- National Transuranic Waste Program – Receive TRU waste packages for shipment to WIPP and complete applicable characterization, retrieval, remediation, and re-packaging of waste.
- Facility Operations and Infrastructure – Maintain and operate all site facilities and systems.
- Comply with the New Mexico Hazardous Waste Renewal Permit that assigns specific responsibilities between DOE and the WIPP operating contractor
- Maintain uninterrupted operations, adjust to mission changes, unexpected work scope, and unforeseen complexities associated with radioactive waste disposal operations.
- Permit Modification for Operational Efficiency – Provide justification for and prepare modifications and renewals to the Hazardous Waste Facility Permit (HWFP) issued by the State of New Mexico.
- Research and Development Programs – Propose Research and Development (R&D) initiatives to improve operational efficiency of WIPP and the National TRU Program

In developing the Final RFP, DOE will consider all comments received through the WIPP M&O procurement mailbox: WIPPMO@emcbc.doe.gov located on the procurement website: <http://www.emcbc.doe.gov/wippmo>

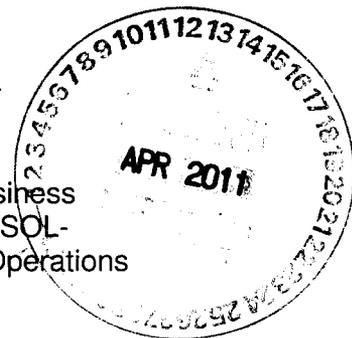
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WIPP M&O Synopsis

March 15, 2011



Synopsis –

The U.S Department of Energy, Environmental Management Consolidated Business Center (EMCBC) is anticipating issuance of a Request for Proposal (RFP) DE-SOL-0002555 for the Waste Isolation Pilot Plant Project (WIPP) Management and Operations (M&O) contract.

The WIPP is a U.S. Department of Energy (DOE) facility, located in Carlsbad, New Mexico, designed and constructed to perform one primary mission: Safely and permanently dispose of the nation's defense-related transuranic (TRU) waste inventories. WIPP is the only facility in the United States specifically designed for the permanent disposal of defense generated TRU waste. The successful Contractor will be required to provide the leadership and management expertise necessary to provide the following services for the management and operation of WIPP:

- General Management – Manage all operations at the WIPP as well as manage and perform characterization, integration and disposal of designated TRU waste from multiple DOE sites throughout the United States for the National Transuranic Waste Program.
- WIPP Disposal Operations – Receive and dispose of TRU waste.
- National Transuranic Waste Program – Receive TRU waste packages for shipment to WIPP at generator sites and conduct activities necessary to complete applicable characterization, retrieval, remediation, and re-packaging of waste.
- Facility Operations and Infrastructure – Maintain and operate all site facilities and systems.
- Comply with the New Mexico Hazardous Waste Renewal Permit, which assigns specific responsibilities between DOE and the WIPP M&O contractor.
- Maintain uninterrupted operations despite variance in level of effort required, and adjust to mission changes, unexpected work scope, and unforeseen complexities associated with radioactive waste disposal operations.
- Environmental Safety and Health – Achieve Environmental Safety and Health (ES&H) excellence, including development and implementation of an Integrated Safety Management System as a cornerstone of all activities.
- Quality Assurance - Maintain a Quality Assurance Program in accordance with the quality assurance provisions of NQA-1.
- EM Project Management – Maintain the existing or equivalent project management system for the EM program including the EM project baselines; Integrated Planning, Accountability and Budgeting System (IPABS); change control process; execution and life-cycle planning process (including standard project management handbook); the project cost-estimating system; integrated resource loaded schedules; and continued updating of an integrated site-wide baseline and critical path analyses.
- Permit Modification for Operational Efficiency – Provide justification for and prepare modifications and renewals to the Hazardous Waste Facility Permit (HWFP) issued by the state of New Mexico.
- Partnering Relationship – Execute work with a common vision to mutually support the DOE and WIPP mission, goals and objectives.

- Centralized Procurement Service – Provide centralized procurement services for containers and materials used in the characterization and packaging of TRU waste.
- Research and Development Programs – Propose Research and Development (R&D) initiatives to improve operational efficiency of WIPP and the National TRU Program.

It is anticipated that the RFP will be issued in Draft for comment on or around April 2011. The Draft RFP is NOT a formal request for proposal. Proposals are not being requested in response to the Draft RFP and will not be evaluated. DOE will provide interested parties an opportunity to provide comments on the Draft RFP. In developing the Final RFP, DOE will consider all comments received through FedConnect <http://www.compusearch.com/products/fedconnect/vendors> and through the WIPP M&O procurement mailbox WIPPMO@emcbc.doe.gov located on the procurement website <http://www.emcbc.doe.gov/wippmo>. DOE requests that all comments and/or inquiries be submitted in writing within 15 calendar days of the release of the Draft RFP.

The Final RFP for which proposals will be accepted and evaluated for the award of a new contract is expected to be issued on or around the 3rd quarter of fiscal year 2011, with an anticipated due date for offers on or around the 4th quarter of fiscal year 2011. The North American Industrial Classification System (NAICS) code for this effort will be 56120 with a size standard of \$35.5 million. The contract award resulting from the Final RFP is expected to be in or about the 3rd quarter of fiscal year 2012. The government anticipates awarding a cost-plus-award fee (CPAF) contract with a base term of 5 years and option period(s) for a total contract period of ten (10) years. This is a full and open competition. The Government does not intend to acquire a commercial item or service using FAR Part 12.

Contracting Office Address:

U.S. Department of Energy
Environmental Management Consolidated Business Center (EMCBC)
250 E. 5th Street, Suite 500
Cincinnati, OH 45202

Place of Performance:

Primary: Carlsbad, New Mexico, United States
Also: WIPP personnel are located and perform work at DOE TRU waste generator sites in states such as Idaho, South Carolina, and Washington as well as any other authorized site that requires TRU waste disposal at WIPP

Primary Point of Contact:

Bill Hensley
Contracting Officer
Bill.Hensley@emcbc.doe.gov



U.S. DEPARTMENT OF
ENERGY



EM Consolidated Business Center

Office Of Environmental Management
safety ✦ performance ✦ cleanup ✦ closure

Waste Isolation Pilot Plant (WIPP) Management & Operations Follow-On Acquisition

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DRAFT REQUEST FOR PROPOSALS (RFP)

This Draft RFP is NOT a formal request for proposal. Proposals are not being requested in response to the Draft RFP and will not be evaluated.

DOE requests that interested parties for this opportunity provide comments on the Draft RFP. In developing the Final RFP, DOE will consider all comments received through the WIPP M&O procurement mailbox WIPPMO@emcbc.doe.gov located on the procurement website <http://www.emcbc.doe.gov/wippmo>. DOE requests that all comments and/or inquiries be submitted in writing by April 18, 2011.

SECTION	TITLE	FORMAT	SIZE
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Section A	Solicitation / Contract Form	PDF	
Section B	Supplies or Services and Prices / Costs	PDF	
Section C	Performance Work Statement	PDF	
Section D	Packaging and Marking	PDF	
Section E	Inspection and Acceptance	PDF	
Section F	Deliveries or Performance	PDF	
Section G	Contract Administration Data	PDF	
Section H	Special Contract Requirements	PDF	
PART II - CONTRACT CLAUSES			
Section I	Contract Clauses	PDF	
PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS			
Section J	List of Attachments	PDF	
PART IV - REPRESENTATIONS AND INSTRUCTIONS			
Section K	Representations, Certifications and Other Statements of Offerors	PDF	
Section L	Instructions, Conditions and Notices to Offerors	PDF	
Section M	Evaluation Factors for Award	PDF	

AMENDMENTS		
Number	Date Posted	Description

PART I – THE SCHEDULE

SECTION B

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PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 SERVICES BEING ACQUIRED

The Contractor shall, in accordance with the terms of this contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to, providing its best efforts so as to carry out in an efficient and effective manner all necessary and related services to manage and operate the Waste Isolation Pilot Plant (WIPP) owned by the U.S. Department of Energy (DOE), located in Carlsbad, New Mexico, as described in Section C, Performance Work Statement (PWS), or as may be directed by the Contracting Officer (CO) within the scope of this contract.

B.2 TRANSITION COST, ESTIMATED COST, TOTAL AVAILABLE AWARD FEE

B.2-1 Transition Activities

The transition activities shall be conducted during the period specified in the clause in Section F entitled "Period of Performance" and shall be performed in accordance with the clause in Section H entitled "Transition Activities" on a cost-reimbursement basis, and no fee shall be paid for these activities. The transition cost shall not exceed \$ _____.

B.2-2 Total Available Award Fee

- (a) The total available award fee for the base period of the contract, beginning October 1 2012, and the option period, if exercised, is shown below.

PERFORMANCE PERIOD	Fee Percent (%)	Total Available Award Fee
Base Period		
October 1, 2012 – September 30, 2013		\$
October 1, 2013 – September 30, 2014		\$
October 1, 2014 – September 30, 2015		\$
October 1, 2015 – September 30, 2016		\$
October 1, 2016 – September 30, 2017		\$
Option Period		
October 1, 2017 – September 30, 2018		\$
October 1, 2018 – September 30, 2019		\$
October 1, 2019 – September 30, 2020		\$
October 1, 2020 – September 30, 2021		\$
October 1, 2021 – September 30, 2022		\$

- (b) All fee for this contract is performance based. There is no Base Fee for this contract. Since the total available award fee for each period has been established, there will be no negotiation of total available award fee at the beginning of each fiscal year. The total available award fee for each year is a percentage of the Annual Fee Base. The Estimated Cost and the Annual Fee Base for the Base Period and the Option Period are as follows:

Base Period	Estimated Cost**	Annual Fee Base***
October 1, 2012 through September 30, 2013	\$160,117,560	\$131,296,399
October 1, 2013 through September 30, 2014	\$160,117,560	\$131,296,399
October 1, 2014 through September 30, 2015	\$160,117,560	\$131,296,399
October 1, 2015 through September 30, 2016	\$160,117,560	\$131,296,399
October 1, 2016 through September 30, 2017	<u>\$160,117,560</u>	<u>\$131,296,399</u>
	\$800,587,800	\$656,481,996
Option Period		
October 1, 2017 through September 30, 2018	\$160,117,560	\$131,296,399
October 1, 2018 through September 30, 2019	\$160,117,560	\$131,296,399
October 1, 2019 through September 30, 2020	\$160,117,560	\$131,296,399
October 1, 2020 through September 30, 2021	\$160,117,560	\$131,296,399
October 1, 2021 through September 30, 2022	<u>\$160,117,560</u>	<u>\$131,296,399</u>
	\$800,587,800	\$656,481,996

** Estimated Cost is defined as total estimated cost and total available award fee, including work performed through WIPP funding as well as estimated funding to be received from other DOE sites.

*** Annual Fee Base is estimated in accordance with DEAR 970.1504-1, including estimated exclusions, adjustments, and classification factors.

- (c) At the end of each performance period specified above, there shall be no adjustment in the amount of the total available award fee based on differences between the annual fee base and the actual fee base resulting from performance of the work. Total Available Award Fee is subject to adjustment only under the provisions of the clause in Section I entitled FAR 52.243-2 "Changes – Cost Reimbursement"; and, for a plus or minus 15% change in the annual fee base. An adjustment in total available award fee shall not be negotiated for any amount within the plus or minus 15% change threshold from the annual fee base. If an adjustment in the total available award fee is necessary in accordance with this subparagraph, the revised total available award fee shall be calculated in accordance with the DOE fee policy in effect at the time of the adjustment multiplied by the ratio of the total available award fee specified above for the applicable performance period to which an adjustment is to be made.

B.3 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary in the Section I Clause DEAR 952.250-70 entitled "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which DOE may legally spend for such purposes.

B.4 OBLIGATION OF FUNDS

Pursuant to the Section I Clause DEAR 970.5232-4 entitled "Obligation of Funds," the total amount obligated by the Government with respect to this contract is \$ _____.

B.5 SINGLE FEE

If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this contract fee structure. Separate additional subcontractor fee shall not be considered an allowable cost under the contract if a subcontractor is a team member or, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this contract unless otherwise approved by the Contracting Officer.

The subcontractor fee restriction in the paragraph above does not apply to members of the Contractor's team that are: (1) small business(es); (2) protégé firms as part of an approved mentor-protégé relationship; (3) subcontractors under a competitively awarded firm-fixed-price or firm-fixed-unit-price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, Definitions of Words and Terms.

SECTION C

PERFORMANCE WORK STATEMENT

1. CONTRACT PURPOSE

This major purpose of this contract is to operate and maintain the Waste Isolation Pilot Plant (WIPP) and to implement the DOE's National Transuranic Waste program (NTP). The overall mission of the WIPP and the national program is to protect human health and the environment by safe management, retrieval, characterization, transportation, and disposal of approved wastes.

2. BACKGROUND

- 2.1 Background:** The WIPP is located in a 16 square mile (approximately 10,240 acre) site owned by the United States Department of Energy (DOE) within Southeastern New Mexico. The WIPP includes surface facilities and a geological repository located 2150 feet below the surface. The Property Protection Area (PPA) at WIPP encloses approximately 35 acres, and includes the majority of the buildings and structures. The area outside the fenced PPA consists of otherwise undeveloped, high-desert terrain. Several administrative offices are located in the city of Carlsbad, approximately 25 miles west of the WIPP.

The DOE Carlsbad Field Office (CBFO) is responsible for administration of the contract and the NTP. The DOE Assistant Secretary for Environmental Management (EM) provides program direction to the CBFO. Sandia National Laboratories (SNL) performs for CBFO the scientific studies and computational activities associated with the long-term performance of the WIPP. Los Alamos National Laboratory Carlsbad Operations (LANL-CO) provides to CBFO technical expertise on Transuranic (TRU) waste characterization, acceptable knowledge, transportation, packaging, and inventory. The Carlsbad Technical Assistance Contractor (CTAC) provides technical support to the CBFO, with the emphasis on audits and assessments. Other national laboratories and DOE facilities are funded by the CBFO to perform specific tasks related to the WIPP mission. CBFO also contracts with other entities to support its mission.

- 2.2 Regulatory Basis:** In 1992 Congress passed the WIPP Land Withdrawal Act (LWA) which serves as a concise record of the steps required to establish WIPP, the major institutions involved, and basic requirements for disposal and decommissioning activities. The LWA established the Environmental Protection Agency (EPA) as the primary regulator for WIPP with responsibility for evaluating and verifying that WIPP shall safely isolate TRU waste and protect human health and the environment.

To carry out this responsibility EPA issued regulatory standards for waste containment (40 CFR 191) and WIPP specific criteria (40 CFR 194) that require DOE to provide certain information to show how the standards are being met. The Compliance Certification Application (CCA) and the Compliance Recertification Applications (CRA) of 2004 and 2009, document WIPP's ability

to meet EPA's requirements for waste containment. A new CRA is required for WIPP every five years by the LWA.

The EPA certified the WIPP on May 18, 1998, and the disposal phase began on March 26, 1999, when the first shipment of waste was received. The disposal of mixed-transuranic waste was authorized with the issuance of a Hazardous Waste Facility Permit (HWFP) by the New Mexico Environment Department. This permit was originally issued on October 28, 1999 and is required to be renewed every ten years. The first permit renewal application cycle was completed with the issuance of a new permit on 30 November 2010.

The waste analysis plan, contained in the HWFP, specifies waste characterization activities to be carried out at TRU waste generator sites. TRU waste has been and shall continue to be shipped to WIPP from DOE Large Quantity Sites (LQS) and from Small Quantity Sites (SQS). Waste may be shipped inter-site for consolidation, characterization, or treatment.

TRU waste shipped to WIPP is required to be shipped in Type B packagings (shipping containers) certified by the U. S. Nuclear Regulatory Commission (NRC) and provided by the CBFO or acquired by the Contractor. The four types of packagings currently identified for WIPP are the TRUPACT-II and HalfPACT for Contact Handled TRU waste and the Remote Handled-72-B cask and the CNS 10-160 B cask for Remote-handled-TRU waste. A TRUPACT-III package has been licensed by the NRC and will be put in service in 2011. Additionally, several new payload containers shall be deployed for disposal at WIPP such as shielded containers and Neutron/Gamma Shielded canisters. Currently, TRU waste is shipped by truck, but may also be shipped by rail in the future. TRU waste shall be disposed of through the life of waste operations at the facility. Following the disposal phase (estimated approximately 2030), the WIPP shall enter its decommissioning phase lasting approximately five years. During this five year period, the repository shall be permanently closed.

In the post-decommissioning phase, active institutional controls will be employed for at least 100 years to prevent human intrusion into the repository. Passive controls including permanent markers shall warn future societies of the location and hazards of the disposal site. (Note: Work to develop the designs and plans for permanent markers is expected to be initiated within the period of performance of the contract.

- 2.3** EM Journey to Excellence: Established in 1989, the Department of Energy's (DOE) Office of Environmental Management (EM) is charged with addressing the environmental legacy of over 50 years of nuclear weapons production and government sponsored research. In order to continue and build upon the momentum of the first 20 years of the EM program, and within the broader context and in support of Administration and Departmental policies, strategies, and initiatives, EM has developed the "Roadmap for EM's Journey to Excellence" (Rev. 0, December 16, 2010). That document builds upon and integrates DOE Management Principles, EM Core Values, EM Priorities, EM's vision, and EM's mission by establishing four programmatic and three management-related goals, as follows:

Programmatic Goals

- Goal 1: Complete the three major tank waste treatment construction projects within the approved baselines
- Goal 2: Reduce the life-cycle costs and accelerate the cleanup of the Cold War environmental legacy
- Goal 3: Complete disposition of 90 percent of the legacy transuranic waste by the end of 2015
- Goal 4: Reduce the EM legacy footprint by 40 percent by the end of 2011, leading to approximately 90 percent reduction by 2015

Management Goals

- Goal 5: Improve safety, security, and quality assurance towards a goal of zero accidents, incidents, and defects
- Goal 6: Improve contract and project management with the objective of delivering results on time and within cost
- Goal 7: Achieve excellence in management and leadership, making EM one of the best places to work in the Federal government

In the performance of this contract, the Contractor shall support and implement the following actions in furtherance of the "Roadmap for EM's Journey to Excellence" and achievement of the above goals. Goals 3, 5 and 6 have direct relevance to this contract, in that the Contractor is expected to facilitate all activities to ship and receive waste to complete the disposition of 90 percent of legacy transuranic waste by the end of 2015. These activities are expected to be conducted safely, and meet all security/quality requirements within the projected cost and schedule. The Performance Evaluation Management Plan (PEMP) shall address contract-specific incentives associated with the Contractor's support of the above Goals.

3. OVERALL CONTRACTOR RESPONSIBILITIES

3.1 PROGRAM MANAGEMENT

- 3.1.1** The Contractor shall manage, integrate, operate, and maintain the facilities, equipment and programs described in this Performance Work Statement (PWS). The Contractor shall perform the work and services in a manner that will instill public confidence in the WIPP and the National Transuranic Waste Program and meet applicable federal, state and local laws, regulations, standards, governing agreements, and permits with regulatory and oversight governmental organizations. The Contractor shall also comply with the terms and conditions of this contract and with Contracting Officer directions and approvals.
- 3.1.2** Pursuant to the Contract Clause entitled "Laws, Regulations, and DOE Directives," the Contractor shall conform to the requirements of applicable DOE Orders and Directives, which may establish management, technical, procedural or other standards, and specifications for Contractor work activities. The Orders and Directives applicable to this contract are contained in Section J.

- 3.1.3** The Contractor shall be fully responsible and accountable for the safe accomplishment of all work, whether performed by its own personnel or subcontractors or other entities who perform services at the WIPP facility (e.g. vending machine suppliers, community re-use organization, etc). The Contractor shall be responsible for planning, integrating, managing and executing the programs, projects, operations and other activities as described in this PWS such that all functions are fully integrated. To meet these requirements, the Contractor shall provide program management functions that include: environmental health, safety, and quality assurance, legal services, audit services, business systems management, human resources, property management, information resources management, record management, financial management, safeguards and security, public information and external communication activities, intergovernmental affairs, training, procurement, underground experimental support, and industrial relations.
- 3.1.3.1** The Contractor shall be responsible for operations, environmental compliance, safety, health and quality assurance within its own organization and its subcontractor organizations
- 3.1.3.2** The Contractor shall be responsible for integration of, and, as directed by the Contracting Officer, award and administration of designated subcontracts for the operation of WIPP and the National Transuranic Waste Program.
- 3.1.3.3** The Contractor shall develop and implement a DOE approved Records Management Program that ensures compliance with 36 CFR, Chapter 12, Subchapter B (Records Management), DOE O 243.1 (Records Management Program), DOE O 243.2 (Vital Records) as well as the requirements listed in Section H, "Records Management," including the management of electronic records, email and records acquired from a predecessor Contractor.
- 3.1.3.4** The Contractor shall operate, modify, and develop IT systems and applications in support of the execution of the work under this contract. This includes desktop computing, desktop support, network management, server management, application development and modification, and IT facility management in accordance with requirements identified in Section H, "Information Technology (IT)".
- 3.1.4** The Contractor shall be responsible for all operations at the WIPP and for characterization, integration, and disposal of designated waste for the National Transuranic Waste Program. The Contractor shall participate in a coordinated approach to retrieval, remediation, packaging, characterization, and transportation activities at the associated generator sites throughout the complex and disposal activities at WIPP. The Contractor may place Retrieval and Characterization Teams (RCTs) within the complex to assist and/or perform in the efficient retrieval,

remediation, packaging, characterization, and transportation of TRU waste. The Contractor shall work with generator sites to assess generator site retrieval and characterization data, budget, and technical information as necessary to facilitate planning and integration of RCT's. The Contractor shall develop programs, capabilities, and technologies consistent with the WIPP and National Transuranic Waste Program mission to support emerging needs of Federal and non-Federal, educational institutions and private sector partners. The Contractor shall recognize that there are objectives associated with the vision of the Government that shall be considered in the management, integration, and operation of the WIPP and in conducting TRU waste activities. These objectives include:

- Safety and Environmental Management Excellence – Protection of the employees, the public and the environment;
- Operational Efficiencies – Pursue efficiencies in waste retrieval, characterization, transportation, and disposal;
- Support to Small Quantity Sites (SQS) in the removal and disposal of TRU waste;
- Standardization Efficiencies – Improve the standardized characterization approach for application where feasible; and
- Characterize and dispose of waste as agreed upon between DOE and the Contractor.

3.1.5 The Contractor shall be responsible for maintaining the condition of the Government owned property and equipment during the term of the contract such that the intended functionality, including safety, health, and environmental compliance, for mission needs is met. This includes enhancements to maintain facility operability for until at least year 2030 and a maintenance plan that addresses planned outages, equipment replacement, facility upgrades, and facility modifications. The plan shall be furnished within 6 months of contract award and updated at least annually.

3.1.6 The Contractor shall, at the start of each fiscal year, after receipt of new fiscal year funding, modify the execution year baseline activities as necessary with the development of activity based cost documents approved by the Contractor and CBFO for the work to be performed in that fiscal year. The expected activities to occur during each contract year for Disposal Panels, CH TRU Transportation, CH TRU Waste Disposal, RH TRU Transportation, RH TRU Disposal and transportation corridors are to be defined in detail in a program planning schedule.

3.1.7 The Contractor shall utilize a Work Authorization system in accordance with DOE O 412.1A entitled, "Work Authorization System". Work authorization and activity based cost documents and other referenced

documents shall be maintained as a conformed Work Authorization package and the status of changes shall be submitted in monthly submittals to the CBFO Contracting Officer.

- 3.1.8** The Contractor shall support existing Memorandum of Understandings (MOU's) and Memorandum of Agreements (MOA's) and develop new MOU's and MOA's as required.
- 3.1.9** The Contractor shall, when authorized by DOE, enter into subcontracts for the performance of any part of the work required to support the DOE mission described herein. DOE may establish a threshold level under which prior approval to subcontract will not be required.
- 3.1.10** The Contractor shall support CBFO such as; initiatives to improve NTP activities, improve waste disposal effectiveness, demonstrate full utilization of the waste repository and implement scientific and research initiatives.
- 3.1.11** The Contractor shall maintain the existing or equivalent project management system for the EM program including the EM project baselines; Integrated Planning, Accountability and Budgeting System (IPABS); change control process; execution and life-cycle planning process (including standard project management handbook); the project cost-estimating system; integrated resource loaded schedules; and continued updating of an integrated site-wide baseline and critical path analyses. These processes include other WIPP participants, functional and crosscutting activities, and will include relevant activities at characterization and generator sites, including any funding sent to CBFO and the Contractor that was previously designated for generator sites. The Contractor shall create and maintain a National TRU plan to monitor performance expectations across the complex which includes use of integrated resource loaded schedules correlated with specific delivery dates.

Contractor shall perform work that is consistent with Section H, "Project Control and Reporting Requirements" and "Work Authorization".

- 3.1.12** The Contractor shall establish and maintain a centralized support function to assist other DOE sites with the preparation, processing or packaging of transuranic waste.
 - 3.1.12.1** The Contractor shall provide quality controlled centralized procurement services for containers and materials used in the characterization and packaging of TRU waste.
 - 3.1.12.2** The Contractor shall design, test, qualify and/or procure containers that meet the DOT type A requirements.
 - 3.1.12.3** The Contractor shall supply other materials including containers, consumables and/or equipment as directed by the CBFO.

3.1.12.4 The Contractor shall identify and implement opportunities to reduce DOE costs through standardization and by providing support to any TRU waste storage or generator site as directed by the CBFO.

3.1.13 Partnering Relationship

The Contractor and CBFO shall work within a partnering relationship for work related to execution of this contract with a common vision to mutually support mission goals and objectives. The relationship will promote the principles of teamwork, mutual respect, openness, honesty, trust, professionalism, and building a better understanding of one another's position. The relationship includes a joint commitment to:

- Maintain high safety performance.
- Complete the work on or before schedule, within or below cost.
- Eliminate barriers to a faster, more cost effective and efficient program.
- Create an organizational culture able to accommodate change.
- Resolve conflicts through a coordinated work effort to avoid adversarial relations.
- Reinforce the partnered relationship with honest feedback and continual improvement.

3.2 ENVIRONMENTAL PROTECTION AND REGULATORY COMPLIANCE

3.2.1 The Contractor shall achieve and maintain Environmental Management excellence and make it a cornerstone of all operations.

3.2.2 Protection of the Environment is a fundamental responsibility of the Contractor. The Contractor's Environmental program shall be operated as an integral, but visible, part of how the organization conducts business. The Contractor shall ensure that cost reduction and efficiency efforts are fully compatible with Environmental Management performance.

3.2.3 Hazardous Waste Facility Permit:

The Contractor and DOE, as co-permittees, shall provide justification for and preparation of modifications and renewal of the Hazardous Waste Facility Permit (HWFP) issued by the State of New Mexico. The Contractor and DOE shall focus these efforts to remove permit requirements that increase the costs of characterizing, certifying, transporting or disposing of TRU waste, the Contractor shall partner with DOE to establish an effective working relationship with the New Mexico Environment Department, including frequent communications, to ensure

timely identification and resolution of technical and regulatory issues, and to establish permitting schedules.

3.2.4 Compliance Certification:

The Contractor shall assist DOE with responding to questions from the EPA on the Compliance Recertification Application (CRA). The Contractor shall assist DOE and its Contractors in the preparation and submittal of the CRA documentation to the EPA every five years as required by law. The Contractor shall focus these efforts such that the EPA can render a timely completeness determination and receive EPA approval within the six month 40 CFR 194-driven timeframe. The Contractor shall assist as requested in other activities related to EPA activities under the Land Withdrawal Act.

3.3 SAFETY AND HEALTH

3.3.1 The Contractor shall develop and execute an Integrated Safety Management System Description (ISMSD). The ISMSD shall be submitted to CBFO for approval. The ISMSD shall be updated as required. The Contractor shall manage and perform work in accordance with the ISMSD. The Contractor shall be prepared to undergo ISMS verification and validation by 1 October 2013.

3.3.2 This system will include principles of the International Organization for Standardization (ISO) 14001 Program, the Voluntary Protection Program (or approved equivalent) and the Standards and Requirements Identification Document (S/RID), Document No. WP 15-PA3000.

The Contractor shall:

- Coordinate with other WIPP site entities to ensure a clear understanding of roles, responsibilities, and compliance with applicable environmental requirements laws, regulations, permits, orders, and agreements when work is done at other sites.
- Ensure that ES&H performance be considered in the selection of subcontracts and incorporated into subcontracts as required.

3.4 QUALITY ASSURANCE

3.4.1 The Contractor shall implement and maintain a Quality Assurance (QA) Program in accordance with the quality assurance provisions of 40 CFR 194, and that implements the quality program requirements contained in CAO-94-1012 Carlsbad Field Office Quality Assurance Program Document. The Quality Assurance Program is applicable to all programs and projects managed by the CBFO which require a QA program, including activities related to compliance application, waste characterization, repository performance assessment, waste isolation, waste transportation, nuclear safety, environmental protection, and management and operation of the WIPP facility.

For NRC approved packaging, the Contractor shall maintain a program that is equivalent to the requirements of 10 CFR 71 Subpart H. Within 30 days of award the Contractor shall submit to CBFO for approval a revised or new Quality Assurance Project Plan that complies with the references above. The Contractor shall establish effective management systems to identify deficiencies, resolve deficiencies in a timely manner, ensure corrective actions are implemented, and prioritize and track commitments and actions. Such quality management systems shall support the ISMS in addition to the QA program.

4. PROGRAM REQUIREMENTS

The WIPP conducts site-specific and inter-site integration of TRU waste activities. To achieve the EM programmatic objectives, the Contractor shall be responsible for integrating waste management and environmental activities at the WIPP and at generator sites.

4.1 WIPP DISPOSAL OPERATIONS

Facilities at the WIPP are used to receive and dispose of TRU waste in a safe and environmentally sound manner.

4.1.1 Infrastructure

4.1.1.1 Long-term mission support

The Contractor shall maintain an integrated infrastructure program that includes long-term infrastructure reinvestment planning. The Contractor shall balance short-term pressures to improve operations with long-term infrastructure reinvestment planning. Infrastructure includes but not limited to: business systems, facilities, equipment, functional specialties, roads and utilities, emergency management, facility safety, surveillance and maintenance, safeguards and security, and asset maintenance.

4.1.1.2 Disposition of excess facilities, structures, and equipment

The Contractor shall disposition excess facilities, systems, structures, and equipment in accordance with the clause in Section I, Government Property.

4.1.1.3 Land management, facility planning and dispositioning requirements as they become excess to the Department's needs

The Contractor shall maintain the WIPP Land Management Plan (LMP) and the Integrated Capital Asset Management Process Plan (ICAMP) and all necessary supporting systems including the asset inventory, condition, master planning, geographic information system, space management, and risk assessment.

4.1.1.4 Configuration Management

The Contractor shall maintain a configuration management system that ensures that required documentation such as plans, drawings, procedures, system design descriptions and permits are maintained up-to-date, and that appropriate control plans, quality assurance requirements and change control boards are established. Changes shall be integrated so that all documentation, training, permits, and facility and equipment modifications are verified complete prior to implementation.

4.1.2 Operations

4.1.2.1 Waste Disposal Facilities

The Contractor shall manage, operate, maintain, repair and replace waste handling facilities, systems, and equipment. The Contractor shall actively pursue enhancements to waste handling facilities to provide increased efficiency and reliability. The Contractor shall implement a robust corrosion and preventive maintenance program and semi-annually conduct a thorough review of all buildings and systems to identify problem areas. Budgets and integrated schedules shall be updated and adjusted to reflect the latest data.

4.1.2.2 Mining Operations

The Contractor shall maintain, operate and continually evaluate underground facilities and systems for cost effective and efficient operations. This includes evaluating tradeoffs of new excavation versus remediation of existing spaces and evaluation of obtaining regulatory approvals if required.

The Contractor shall plan and schedule the development of underground disposal facilities to provide newly mined disposal panels on a "just-in-time" basis. Waste disposal panels shall be mined and outfitted so that they are certified for use when the previous waste disposal panel is filled and ready for closure.

Contact-Handled TRU Waste Disposal - The Contractor shall be responsible for disposal including facility modifications and operational readiness of WIPP CH TRU facilities.

Remote-Handled TRU Waste Disposal - The Contractor shall be responsible for RH TRU waste disposal, including facility modifications and operational readiness of WIPP RH TRU facilities.

4.1.2.3 Security

The Contractor shall be responsible for security at the WIPP and other CBFO locations, but all budget decisions or changes in scope must be approved by the CBFO Contracting Officer through coordination with the Contracting Officer Representative. The Contractor's security program shall maintain a security posture consistent with DOE directives, a

clearance program, and authorized derivative classifiers. Existing emergency aid and response agreements shall be maintained.

4.1.2.4 Facility Operations and Infrastructure

The Contractor shall assist DOE through direct participation and other support in achieving the DOE energy efficiency goals and objectives in electricity, water, and thermal consumption, conservation, and savings, including goals and objectives contained in Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. The Contractor shall maintain and update, as appropriate, its Site Plan (as required elsewhere in the contract) to include detailed plans and milestones for achieving site-specific energy efficiency goals and objectives. With respect to this paragraph, the Plan shall consider all potential sources of funds, in the following order: 1) the maximum use of private sector, third-party financing applied on a life-cycle cost effective basis, particularly from Energy Savings Performance Contracts and Utility Energy Services Contracts awarded by DOE; and 2) only after third-party financing options are evaluated, in the event that energy efficiency and water conservation improvements cannot be effectively incorporated into a private sector financing arrangement that is in the best interests of the Government, then DOE funding and funding from overhead accounts can be utilized.

4.2 NATIONAL TRANSURANIC WASTE PROGRAM

The National Transuranic Waste Program (NTP) develops and manages a comprehensive waste management strategy for all TRU waste under the responsibility of the DOE. The Contractor is responsible for the integration of all NTP activities. Key elements of the NTP include: 1) disposal of TRU waste at the WIPP as described in C.4.1.2; 2) Generator/storage site waste retrieval and characterization activities applicable to the specific generator site's needs as described in C.4.2.1; and 3) TRU waste transportation activities, as described in C.4.2.2 and C.4.2.3. The Contractor shall receive Government-provided TRU waste packages for shipment to WIPP at generator sites and, in selected cases, may retrieve waste or accelerate retrieval to develop a backlog of waste. With CBFO approval, the Contractor is fully authorized as the DOE-designated Contract integrator to conduct activities necessary to complete applicable characterization for shipping to a characterization site or WIPP, and disposal at WIPP.

4.2.1 Waste Characterization /Retrieval

The Contractor shall be responsible for integration of waste characterization, remediation, repackaging and retrieval at designated DOE characterization sites with DOE Contractors.

4.2.1.1 The Contractor, if directed by DOE, may provide and deploy to generator sites Retrieval and Characterization Teams and equipment to assist and/or perform in the management and execution of legacy TRU waste retrieval, remediation, repackaging, loading and characterization activities.

- 4.2.1.2 The Contractor shall assist generator sites as directed by CBFO in planning for the management of newly generated TRU waste.
- 4.2.1.3 The Contractor shall ensure that a certified waste characterization program is maintained at CBFO approved characterization sites in accordance with the WIPP requirements.
- 4.2.1.4 The Contractor shall ensure characterization of waste from Contractor characterization sites is in accordance with WIPP requirements.
- 4.2.1.5 The Contractor shall ensure transportation of waste from generator sites is in compliance with applicable laws and regulations.
- 4.2.1.6 The Contractor may be required to identify disposition paths for low-level and low-level mixed wastes currently managed as TRU waste.
- 4.2.1.7 The Contractor shall arrange inter-site shipments to facilitate TRU waste disposal and consolidation.
- 4.2.1.8 At sites where waste characterization, waste packaging and/or loading services are performed, the Contractor shall ensure the appropriate MOAs or MOUs are available.
- 4.2.1.9 The Contractor shall maintain the laboratory capability to perform headspace gas and RCRA sample analysis.

4.2.2 Transportation Packaging

- 4.2.2.1 The Contractor shall maintain NRC-certified packagings (TRUPACT-II, TRUPACT-III, HalfPACT, 10-160B and 72-B cask) and records for packaging fabrication and maintenance. Other packages such as shielded containers may be added to this list after NRC certification activities have been completed and will be added to NRC-certified package and records for packaging fabrication and maintenance.
- 4.2.2.2 The Contractor shall provide solutions to technical and regulatory issues related to NRC-certified packagings. The Contractor shall prepare draft amendments to the Certificates of Compliance to authorize new waste forms for transport and to justify modifications to the existing conditions of use.
- 4.2.2.3 The Contractor shall provide technical and quality oversight for the procurement of transportation packagings and procure if directed by DOE.

- 4.2.2.4 The Contractor shall submit NRC certification requests and SARPs for new and existing packagings.

4.2.3 Transportation Management

- 4.2.3.1 The Contractor shall be responsible for coordinating and ensuring an integrated approach with the transportation Contractor(s) for transportation of TRU waste from generator sites to WIPP and from generator sites to characterization sites, including scheduling and dispatching shipments, coordinating empty shipments, and providing for maintenance on truck trailers and packagings.
- 4.2.3.2 The Contractor shall assist DOE in certification of the generator/storage sites compliance with transportation requirements and shall be responsible for the approval of shipments to WIPP.
- 4.2.3.3 The Contractor shall assist shipping sites in the initial and continued use of TRU Waste shipping packages.
- 4.2.3.4 The Contractor shall utilize the DOE designated transportation monitoring system to monitor loaded shipments dispatched from the WIPP and inbound waste shipments. The Contractor shall prepare the integrated shipping schedule, which includes TRU packaging, trailers, drivers, and tractor requirements.
- 4.2.3.5 The Contractor shall conduct activities related to the opening and maintenance of shipping corridors and the provision of emergency response training along shipping corridors.
- 4.2.3.6 The Contractor shall identify, analyze and resolve issues related to waste transportation and emergency management with states, tribes and local government officials. The Contractor may be required to provide trained and qualified personnel for response to transportation incidences.

4.3 RESEARCH AND DEVELOPMENT PROGRAMS

4.3.1 R&D for Program and Operational Efficiencies

The Contractor shall propose research and development initiatives that have the objective of improving the operational efficiency of the WIPP and the National TRU Program. These initiatives must be submitted to DOE for approval prior to Contractor funding and implementation of such initiatives.

4.3.2 Other Experimental Programs

The Contractor shall assist the DOE with experiments and demonstrations in support of other programs not associated with TRU waste disposal, which may or

may not focus on using the unique characteristics and facilities of WIPP/Land Withdrawal Act area.

4.3.3 Applied Development

The Contractor may address issues under applied development as directed by CBFO.

4.3.4 International Repository Science

The Contractor shall support DOE in the development and maintenance of an International Repository Science Program as directed by the CBFO. This may include the conduction of research at the WIPP facility, tours, presentations and the hosting of meetings and workshops.

5. ACRONYMS

CBFO	Carlsbad Field Office
CCA	Compliance Certification Application
CFR	Code of Federal Regulations
CH TRU	Contact-Handled
CRA	Compliance Recertification Application
CTAC	Carlsbad Technical Assistance Contractor
DOE	U. S. Department of Energy
DOE-AL	Albuquerque Operations Office
EM	Assistant Secretary for Environmental Management
ES&H	Environment, Safety and Health
EPA	U. S. Environmental Protection Agency
HalfPACT	Half-height Transuranic Waste Package Transporter
HWFP	Hazardous Waste Facility Permit
ICAMP	Integrated Capital Asset Management Process
IPABS	Integrated Planning, Budgeting and Accountability System
ISMS	Integrated Safety Management System
ISO	International Standards Organization
LMP	Land Management Plan
NRC	U. S. Nuclear Regulatory Commission
NTP	National Transuranic Waste Program
PPA	Property Protection Area
QA	Quality Assurance
QAPD	Quality Assurance Program Description
RCT	Retrieval and Characterization Teams
RH TRU	Remote-Handled
SARP	Safety Analysis Report for Packaging
SNL	Sandia National Laboratories
SQS	Small Quantity Site
S/RID	Standards and Requirements Identification Document
TRU	Transuranic Waste
TRUPACT-II	Transuranic Waste Package Transporter Type II
TRUPACT-III	Transuranic Waste Package Transporter Type III
VPP	Voluntary Protection Program
WTS	Washington TRU Solutions
WIPP	Waste Isolation Pilot Plant

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PART I – THE SCHEDULE

SECTION D

PACKAGING AND MARKING

D-1 PACKAGING

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder, shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rates, except for specific requirements discussed in Section C.

D-2 MARKING

Each package, report, or other deliverable shall be accompanied by a letter or other document which:

- Identifies the contract number under which the item is being delivered; and
- Identifies the contract requirement or other instruction which requires the delivered item(s).

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PART I – THE SCHEDULE

SECTION E

INSPECTION AND ACCEPTANCE

E.1 FAR 52.246-5 INSPECTION OF SERVICES--COST- REIMBURSEMENT (APR 1984)

- (a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by re-performance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

E.2 ACCEPTANCE

Acceptance for all work and effort under this contract shall be accomplished by the Contracting Officer or any other duly authorized representative.

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PART I – THE SCHEDULE

SECTION F

DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE

The base period of performance for this contract is from the date that the Contractor assumes full responsibility for the Performance Work Statement (PWS) through September 30, 2017 with an option to extend the term of this contract for a period of five (5) years. The option will be exercised in accordance with Section I, FAR 52.217-9, "Option to Extend the Term of the Contract".

The transition period is 90 days from the written notice to proceed or as extended by the Contracting Officer. If the transition period is extended, the Contracting Officer shall provide written notification of the date the Contractor assumes full responsibility for the PWS in accordance with the clause in Section H entitled "Transition Activities".

F.2 PRINCIPAL PLACE OF PERFORMANCE

The work under this contract is to be carried out at a variety of locations, but the principal place of performance will be the Waste Isolation Pilot Plant site near Carlsbad, New Mexico.

F.3 STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)(ALTERNATE I) (APR 1984)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the order during the period of work stoppage. Within a period for 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--
- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination Clause of the contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof and in any other terms of

the contract that may be affected, and the contract shall be modified, in writing, accordingly, if--

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

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SECTION G

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PART I – THE SCHEDULE

SECTION G

CONTRACT ADMINISTRATION DATA

G.1 TECHNICAL AND ADMINISTRATIVE CORRESPONDENCE/MATTERS

To promote timely and effective administration, correspondence submitted by the Contractor under this contract shall be subject to the following procedures:

- (a) Technical and Administrative Correspondence/Matters. Technical and administrative correspondence (as used herein, excludes other correspondence described in Paragraph (b)) concerning performance of this contract shall be addressed to the Manager, Carlsbad Field Office (CBFO). The CBFO Manager, or designee, is the Contracting Officer Representative for administration of technical and administrative matters for this contract. The Contractor shall use the DOE CBFO as the focal point for all technical and administrative matters regarding this contract.
- (b) Other Correspondence. Other correspondence, including waivers, deviations, or modifications to the requirements, terms, or conditions of this contract, shall be addressed to the Contracting Officer at the DOE Contracting Office.
- (c) DOE Contracting Office. The Contracting Officer's address is:

Carlsbad Field Office
U.S. Department of Energy
P.O. Box 3090
Carlsbad, NM 88221
- (d) Patents/Technical Data Correspondence. Correspondence concerning patent and technical data issues shall be addressed to:

General Counsel,
Carlsbad Field Office, U.S. Department of Energy,
P.O. Box 3090, Carlsbad, NM 88221
- (e) Subject Lines(s). All correspondence shall contain a subject line commencing with the Contract Number, as illustrated below:

"SUBJECT: Contract No. DE-TBD (*insert subject topic after Contract Number, e.g., "Request for subcontract placement approval"*).

G.2 DOE ORGANIZATIONAL PROPERTY MANAGEMENT OFFICER

The Contractor may use the Organizational Property Management Officer as a point of contact for guidance and assistance involving property requirements. The CO shall be contacted for any matter which involves a change in any of the expressed terms and

conditions of the contract. Correspondence being sent regarding the property Management officer should be addressed to:

Carlsbad Field Office
U.S. Department of Energy
Attn: Contracting Officer
P.O. Box 3090
Carlsbad, NM 88221

G.3 CONTRACTOR CONTACT

The Contractor shall identify to the CBFO CO the Contractor contact who has the authority and is responsible for managing, administrating, and negotiating changes to the terms and conditions of this contract, as well as executing contract modifications on behalf of the Contractor.

G.4 COST REPORTING PROCEDURES

The following reporting procedures will apply to submission of a monthly cost report for work specified in the Performance Work Statement.

- (a) The Contractor will separately identify costs that pertain to the work scope. The Contractor shall submit a monthly report that separates and identifies costs associated with each level of the WBS at the program and project levels. The report shall conform to any content guidance which may be provided by the Contracting Officer, but at a minimum will include a breakdown of labor hours and material costs.
- (b) The monthly report shall identify the total amount drawn on the letter of credit.
- (c) The Contractor shall certify in each monthly report that the costs included in the report were incurred only to accomplish the work in accordance with the work scope.

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SECTION H

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PART I –THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS AND CERTIFICATIONS

The Representations, Certifications, and Other Statements of Offeror for this contract as completed by the Contractor are hereby incorporated in this contract by reference.

H.2 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government to:

- (a) Accept nonconforming work;
- (b) Waive any requirement of this contract; or
- (c) Modify any term or condition of this contract.

H.3 NO THIRD PARTY BENEFICIARIES

This contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This clause is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

H.4 WORKFORCE TRANSITION

- (a) Right of First Refusal. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees as defined in paragraph H.4(c) who, as of the date of contract award, hold regular appointments and are engaged in performance of work within the scope of work under this contract.
- (b) Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the right of first refusal set forth in paragraph (a) above is not applicable to Incumbent Management Employees as defined in paragraph (d) below. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.
 - (1) For those positions listed above, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.
- (c) Incumbent Employees are defined as employees who hold regular appointments excluding incumbent management personnel as defined in paragraph (d) below with Washington TRU Solutions (WTS) as of the effective date of the award of this contract. Individuals who hold

regular appointments are individuals who are employed for an indefinite duration, with either a full-time work schedule of at least 40 hours per week, or a part-time work schedule of fewer than 40 hours per week, but more than 20 hours per week.

- (d) Incumbent Management Employees are defined as WTS management personnel that are currently in first and second level managers in the WTS management organization and above. Incumbent Management Employees hired by the Contractor shall be paid salaries commensurate with the position and duties as determined by the Contractor and in accordance with this contract.
- (e) Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

H.5 EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) Contractor Employee Compensation Plan

The Contractor shall submit in accordance with Contract Clause H.6, but no later than 30 days before the end of transition a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

(b) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 970.3102-05-6; Compensation for Personal Services (Total Compensation System). DOE-approved standards, if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan as approved by the Contracting Officer.

- (c) DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.
- (d) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
 - (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the Central Contractor Registration (CCR) per FAR 52.204-10.
 - (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
 - (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in paragraph (f) below.
- (e) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

- (1) Incumbent Employees as defined in Clause H.4(a) and (c).
 - (A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by Washington TRU Solutions for at least the first year of the term of the contract.
 - (B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by Washington TRU Solutions. Comparability of the total benefit package for purposes of reimbursement under this contract shall be determined by the CO in his/her sole discretion. Incumbent Employees, including incumbent management personnel that are hired by the Contractor shall remain in their existing pension plans, Washington TRU Solutions Pension Plan (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.
- (2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with contract requirements.

(3) Cash Compensation

(A) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the contract:

- (i) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the total compensation system.
- (ii) Any proposed major compensation program design changes prior to implementation.
- (iii) An Annual Compensation Increase Plan (CIP).
- (iv) Individual compensation actions for the Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan.
- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

(B) The Contracting Officer's approval of individual compensation actions will be required only for the Project Manager, Operations Manager, Central Characterization Program Manager, Chief Financial Officer and all other named key personnel, as identified by the Contracting Officer.

(C) Severance Pay is not payable to an employee under this contract if the employee:

- (i) Voluntarily separates, resigns or retires from employment,
- (ii) Is offered employment with a successor/replacement Contractor,
- (iii) Is offered employment with a parent or affiliated company, or
- (iv) Is discharged for cause.

(D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(f) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for either Incumbent Employees or Non-Incumbent Employees until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
- (2) Cost reimbursement for Incumbent Employee and Non-Incumbent Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved Employee Benefits Value Study and an Employee Benefits Cost Survey Comparison as described below.

- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor as part of its performance self assessment described in paragraph (d) (4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
 - (A) An Employee Benefits Value Study (Ben-Val), every two years each for Incumbent and Non-Incumbent Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Incumbent and Non-Incumbent Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,
 - (B) An Employee Benefits Cost Study Comparison, annually each for Incumbent and Non-Incumbent Employees that analyzes the Contractor's employee benefits cost for Incumbent and Non-Incumbent Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval.
- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.
- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.
- (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
- (8) The Contractor may not terminate any benefit plan during the term of the contract without the prior approval of the Contracting Officer in writing.

- (9) Cost reimbursement for PRBs is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
- (g) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
 - (1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the IRC and ERISA.
 - (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable laws and regulations.
 - (3) Employees working for the Contractor shall only accrue credit for service under this contract after the date of contract award.
 - (4) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under a DOE cost-reimbursement contract.

(h) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.

- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, for Incumbent Employees and retired plan participants, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of contract performance.
- (2) Except for Commingled plans in existence as of the effective date of this contract, each pension plan covering Contractor employees at designated DOE and Contractor facilities shall be a separate pension plan as defined below. When appropriate, Commingled plans shall be converted to separate plans at the time of new contract award or the extension of a contract.
- (3) DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract.

- (4) DOE approval is required for each newly adopted pension plan or for any changes to Commingled pension plans or Taft-Hartley pension plans.
- (5) Each Contractor pension plan shall be submitted to an annual, full-scope audit by an outside independent organization and the resulting report, submitted to DOE, must provide the accounting details specified in ERISA Sections 103 and 104.
- (6) For existing Commingled plans, the Contractor shall maintain and provide annual Separate Accounting of DOE liabilities and assets as for a Separate Plan.
- (7) For existing Commingled plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
- (8) The Contractor shall comply with the requirements of ERISA and any other applicable laws to the fullest extent practical, even if a specific pension plan is exempt from ERISA.
- (9) Proposed pension plan changes will be evaluated by DOE, with approval/disapproval based on the merits of each proposed change, including but not limited to evaluation of the following:
 - (A) Total compensation.
 - (B) Pension benefit surveys published by the Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
 - (C) Retirement studies published by consulting firms, educational institutions, or policy groups.
 - (D) Software models developed by qualified actuaries.
- (10) The Human Resources Management Plan shall include the following:
 - (A) A Pension Management Plan (PMP) discussing the Contractor's plans for management and administration of all pension plans consistent with the terms of this contract. The PMP shall be updated and submitted to the Contracting Officer in draft annually no later than 45 days after the last day of the Plan year along with its draft actuarial valuation.
 - (B) Within thirty (30) days after the date of the submission, appropriate Contractor representatives shall meet with the Contracting Officer to discuss the Contractor's proposed draft annual update of the PMP to specifically discuss any anticipated changes in the projected pension contributions from the prior year's contributions and any discrepancies between the actual contributions made for the most recent year preceding that meeting and the projected contributions for that year which the Contractor had submitted to the Contracting Officer the prior year. The annual revision of the PMP shall include:
 - (i) The Contractor's best projection of the contributions which it will be legally obligated to make to the pension plan(s), beginning with the required contributions for the coming fiscal year, based on the latest actuarial

valuation, and continuing for the following four years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the plan document(s).

- (ii) If the actuarial valuation submitted pursuant to the annual PMP update indicates that the sponsor of the pension plan must impose pension plan benefit restrictions, the Contractor shall provide the following information:
 - (aa) The type of benefit restriction that will take place,
 - (bb) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction, and
 - (cc) The amount of money that would need to be contributed to the pension plan to avoid legally required benefit restrictions.
 - (iii) A detailed discussion of how the Contractor intends to manage the pension plan(s) to maximize the contribution predictability (i.e. forecasting accuracy) and contain current and future costs, to include rationale for selection of all plan assumptions that determine the required contributions and which impact the level and predictability of required contributions. The Contractor is required to annually establish a long term (e.g. five year) plan that outlines the projected retirement plan costs, and any planned action steps to be taken to better manage predictability. The Contractor must also share the following information with the Department during the meeting:
 - (aa) Strategy for achieving and maintaining fully-funded status of the plan(s)
 - (bb) Investment policy statement for the plan, with any recent updates
 - (cc) Results of recent asset liability studies (required to be performed every 3 years or after a significant event) including rationale for maintaining current asset allocation strategy.
 - (dd) Comparison of budget projections submitted to the Department to actual contributions
 - (ee) Any recent reports, findings, or recommendations provided by plan's investment consultant.
 - (ff) Actuarial experience studies to set the plan's actuarial assumptions (required to be performed every 3-5 years)
 - (iv) An assessment to evaluate the effectiveness of the Contractor's pension plan(s) investment management/results. The assessment shall include at a minimum: a review and analysis of pension plan investment objectives; the strategies employed to achieve those objectives; the methods used to monitor execution of those strategies and the achievement of the investment objectives; and a comparative analysis of the objectives and performance of other comparable pension plans. The Contractor shall also identify its plans, if any, for revising any aspect of its pension plan management based on the results of the review.
- (11) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan

that provides credit for service not performed under a DOE cost-reimbursement contract.

(i) Reimbursement of Contractors for Contributions to Defined Benefit Pension Plans

- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.
- (2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer.

(j) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

- (1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filling IRS Form 5500.
- (2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.
- (3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(k) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to benefits, plan design, or funding methods for a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources Management Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:

- (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
 - (B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;
 - (C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;
 - (D) the Summary Plan Description; and,
 - (E) any such additional information as requested by the Contracting Officer.
- (2) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of such special programs and other changes on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
- (3) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:
- (A) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,
 - (B) provide the dollar estimate of savings or costs, and
 - (C) provide the basis of determining the estimated savings or cost.
- (l) Terminating Operations

When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:

- (1) No further benefits for service shall accrue.
- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
- (3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or dispose of such liabilities through a competitive purchase of annuities. Insurance companies bidding for such business shall satisfy Department of Labor requirements.
- (4) Assets shall be determined using the accrual-basis market value on the date of termination of operations.

- (5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all DOE assets assigned to a spun-off or terminating plan shall be placed in a high-yield, fixed-income portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's AA.

(m) Terminating Plans

- (1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination.
- (2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market. Insurance companies bidding for this business shall satisfy Department of Labor standards. Otherwise, the Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
- (3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.
- (4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.
- (5) On the same day as the contractor notifies the IRS of the plan termination, all DOE assets will be placed in a high-yield, fixed-income portfolio until full disposition of the terminating plan's liabilities. The portfolio shall be rated no lower than Standard & Poor's AA.
- (6) DOE liability to a commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the contractor may stipulate to a schedule of payments.

(n) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(o) Definitions

- (1) **Commingled Plans.** Cover employees from the Contractor's private operations and its DOE contract work.
- (2) **Current Liability.** The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) **Defined Benefit Pension Plan.** Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) **Defined Contribution Pension Plan.** Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) **Designated Contract.** For purposes of this Order, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) **Pension Fund.** The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (7) **Separate Accounting.** Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service.

NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.

- (8) **Separate Plan.** Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under the DOE contract, exist under a separate plan document (having its own DOL plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.
- (9) **Spun-off Plan.** A new plan which satisfies IRC Reg. 1.414 (l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a plan termination basis.

H.6 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES

- (a) **Workforce Transition Plan.** In addition to the required Transition Plan and other requirements under the Clauses H.4 through H.8 of this contract, the Contractor shall submit a written Workforce Transition Plan (WF Transition Plan) describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Clause H.4, Workforce Transition and Employee Hiring Preferences, and this Paragraph (a). Notwithstanding timeframes identified elsewhere in the contract, the Contractor shall perform the following activities in the following specified timeframes:

- (1) Within ten days after contract award, the Contractor shall:
 - (A) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with the incumbent contractor (WTS) to ensure compliance with Clause H.4 during the first 90 days after Contract award;
 - (B) Establish and submit to the Contracting Officer a written communication plan that details the communication that the Contractor and its subcontractors will engage in with the incumbent contractor, WTS, regarding implementation of the hiring preference requirements set forth in Clause H.4; and
 - (C) Provide estimated costs and detailed breakouts of the costs to accomplish workforce transition activities within the timeframes specified.
 - (D) Obtain information from the incumbent contractor, WTS, identifying the incumbent employees as defined in H.4(c). Provide and define a process as part of the transition agreements required in paragraph (1)(A) above for obtaining updated and continuous information throughout the Workforce Transition Period regarding the incumbent employees as defined in H.4(c).
- (2) Within 15 days after Contract award, the Contractor shall:
 - (A) Submit to the Contracting Officer copies of the draft WF Transition Plan for the Contractor and its first and second tier subcontractors, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clause H.4 and how it has identified the Incumbent Management Personnel as defined in Clause H.4(d); and
 - (B) Establish a written communication plan with the WTS Contractor regarding the implementation of the hiring preferences in Clause H.4 and provide a copy to the Contracting Officer.
- (3) Within 30 days after contract award, the Contractor shall provide to the Contracting Officer copies of the final Workforce Transition Plan and the draft transition agreements it proposes to enter into consistent with requirements of Clauses H.4.
- (4) Within 60 days after contract award, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in above.
- (5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's and its subcontractors' implementation of the hiring preferences required by Clause H. 4 in accordance with the timeframes set forth below. These reports shall include at a minimum the following information: employee hire dates or anticipated hire dates, employee salary levels, and the names of the former employers of the employees hired by the Contractor and/or hired by the Contractor's first and second tier subcontractors.
 - (A) During the 90 day Contract Transition Period, such reports shall be provided to the Contracting Officer on a weekly basis; or

(B) Earlier, if requested by the Contracting Officer.

(b) Benefits Transition.

The Contractor shall submit a written draft Benefits Transition Plan within 20 days after contract award describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Clause H.5, Employee Compensation: Pay and Benefits, and this Paragraph (b). The Contractor shall provide a final written Benefits Transition Plan to the Contracting Officer within 30 days after contract award. All transitions of the existing pension plan(s) and other existing benefit plans, as well as establishment of any new plans, shall be completed within 90 days after contract award.

(1) The Contractor shall perform the following activities within the specified timeframes:

(A) Within ten days after contract award, the Contractor shall:

- (i) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transitioning of the existing pension plan and other existing benefit plans and/or development of new benefit plans, including specifically the personnel responsible for ensuring that the Contractor becomes a sponsor of the Washington TRU Solutions Pension Plan within the required timeframe and contact information for the above personnel;
- (ii) Request the incumbent contractor, WTS, to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this contract pertaining to sponsorship of the Washington TRU Solutions Pension Plan and other existing benefits plans or establishment of any new benefits plans, including but not limited to the transition of the existing pension and other benefit plans or establishment of any new benefits plans on or before the end of the 90-day Transition Period; and
- (iii) Provide estimated costs and detailed breakouts of the costs to accomplish workforce and benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.

(B) Within 15 days after contract award, the Contractor shall provide to the Contracting Officer a list of the information and documents that the Contractor has requested from the incumbent contractor, WTS, pertaining to the transition of the WTS Pension Plan, and other existing benefit plans. The Contractor shall notify the Contracting Officer on a timely basis of any issues or problems that it encounters in obtaining information or documents requested from the incumbent Contractor, WTS. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this contract, including the timeframes set forth in this clause and the requirements in Clause H.3, Workforce Transition and Employee Hiring Preferences and Clause H.5, Employee Compensation: Pay and Benefits, and Clause.

(C) Within 20 days of contract award, the Contractor shall:

- (i) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clauses H.5 including requirements pertaining to the transition of employee benefit plans; and
 - (ii) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the WTS Pension Plan. The meeting shall include the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor. During such meeting, the Contractor shall discuss all matters necessary to ensure the Contractor adheres to its sponsorship obligations under Clause H.5 Employee Compensation: Pay and Benefits, including execution of transition agreements with the incumbent contractor, WTS, and other applicable entities. The minutes of the meeting as well as a written description of any substantive issues identified at the meeting shall be submitted to the Contracting Officer within two days after the meeting.
- (D) Within 30 days after contract award and as part of the written Benefits Transition Plan, the Contractor shall provide a written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H.5, Employee Compensation: Pay and Benefits will be amended or restated on or before the last day of the 90 day Transition Period. If the creation of new benefit plan(s) are necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this contract, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the contract and applicable law governing such transactions.
- (E) Within 45 days after contract award, the Contractor shall:
 - (i) Submit to the Contracting Officer a draft Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this contract regarding employee compensation. The draft Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.
 - (ii) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by WTS, including but not limited to amendments effectuating the change in sponsorship/participating employer in the WTS Pension Plan. If applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by WTS. Any and all such amendments shall

comply with applicable law governing such transactions and changes in sponsorship of the plans.

- (iii) Submit to the Contracting Officer drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.
- (iv) Provide draft copies of the transition agreements which the Contractor will enter into with WTS to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clauses H.5, Employee Compensation: Pay and Benefits. Copies of these executed transition agreements shall be provided to the Contracting Officer within 45 days.
- (F) No later than 60 days after contract award and prior to the adoption of the documents identified in Paragraphs (B)(1)(e)(ii) and (iii) above, the Contractor shall submit to the Contracting Officer the proposed final versions of these documents for approval.
- (G) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above paragraphs within two days of receipt of the comments.
- (2) After the Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide the following information promptly to the Contracting Officer upon the request of the Contracting Officer:
 - (A) Documents relating to benefit plans offered to Contractor Employees, including but not limited to SPDs, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees and other documents that describe benefits provided to employees of the Contractor who perform work on this contract, and
 - (B) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.5, Employee Compensation: Pay and Benefits.

H.7 POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

- (a) If this contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at Waste Isolation Pilot Project (WIPP) M&O (collectively, the 'Plans'), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer.
- (b) If this contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the contract has been completed (any one such event may be deemed by the Contracting Officer to be 'Contract Completion' for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning

expiration or termination under any other clause of this contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:

- (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
- (2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable contract provisions.

H.8 TRANSITION ACTIVITIES

- (a) During the transition period, as specified in the clause in Section F entitled "Period of Performance," the Contractor shall perform those activities that are necessary to transition the work from the incumbent Contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources responsibilities, and accountability from the incumbent Contractor; and (3) provides for the ability of the Contractor to perform the work in an efficient, effective, and safe manner. The Contractor is responsible for providing all necessary personnel and logistical support (office space, computers, telephone, etc.) during the transition period, unless specifically directed otherwise by the CO.
- (b) The Contractor shall use the transition plan submitted with the proposal as the basis for beginning the transition activities immediately upon award of the contract. The Contractor shall submit a final transition plan and budget to the CO for approval within 10 working days after award of the contract.
- (c) After completion of the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by the CO, the Contractor shall notify the CO in writing that it is ready to assume full responsibility for the work. The Contractor shall assume full responsibility for the work upon the date specified in writing by the CO.
- (d) The final transition plan shall include a schedule of major activities, and address as a minimum:
 - Communication process among the Contractor, incumbent Contractors, site tenants, and DOE;
 - Identification of key transition issues and milestones;

- Identification of a transition team (inclusive of consultants and teaming members, if any);
 - Integration of work packages (direct and indirect) and budgets from incumbent Contractors;
 - Approach to minimizing impacts on continuity of operations;
 - Dispute Resolution;
 - Assumption of WIPP related programs and projects;
 - Comprehensive human resource management as described in clause Section H entitled, "Employee Compensation: Pay and Benefits";
 - Implementation of existing or proposed management systems (e.g., Project Management, Integrated Safety Management, General Electronic Data Processing, Budget and Planning, Purchasing Material, Compensation, Labor/Payroll, Indirect and Direct Costs, Property Management, Billing and Estimating);
 - Assumption of all ES&H responsibilities, functions, and activities;
 - Identification and prioritization of issues after transition; and
 - A detailed cost breakdown by transition activity (include cost breakdown as an appendix to the plan).
- (e) Contractor agrees that costs identified as transition related costs outside of the transition period shall be specifically identified and approved by the CO.

H.9 KEY PERSONNEL

- (a) Unless approved in advance, in writing, by the CO, should any Key Personnel be removed, replaced, or diverted by the Contractor for reasons under the Contractor's control (other than to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization) within the first two years of performance from the effective date of the contract (SF 33, Block 2); or for a replacement Key Personnel within two years of being placed in the position, the Contractor shall forfeit \$250,000 in fee if said Key Personnel is the Project Manager, and \$100,000 in fee for each removal, replacement, or diversion of all other key personnel within two years after effective date of the contract or within two years of being placed in the position.
- (b) The personnel listed below or elsewhere in this contract are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (c) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

Name

Title

Project Manager
Operations Manager

Central Characterization Program Manager
Chief Financial Officer

H.10 TECHNICAL DIRECTION - DEAR 952.242-70 (DEC 2000)

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
- (1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.
- (b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract;
or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must:

- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or
 - (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

H.11 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN

The Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan with goals, submitted by the Contractor consistent with the provisions of the Contract Clause entitled, "Small Business Subcontracting Plan" and approved by the Contracting Officer is incorporated as an Attachment to Section J. Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual" subcontracting plan which shall establish subcontracting goals, as described in paragraph (d)(1) and (2) of Contract Clause entitled "Small Business Subcontracting Plan" (FAR 52.219-9). The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this contract. The Contractor's performance in meeting the goals will be assessed as part of the award fee determination under this contract.

H.12 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS

On October 1, 2012, the Contractor shall assume responsibility for existing contracts and other agreements from Contract Number DE-AC29-01AL66444. These include: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permit requirements, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans), and (g) other agreements in effect prior to execution of this contract.

H.13 AUTHORIZATION AND CONSENT – RESEARCH AND DEVELOPMENT SUBCONTRACTS

The Contractor agrees to include the "Authorization and Consent" clause at FAR 52.227-1 with its Alternate I, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities.

H.14 SEPARATE CORPORATE ENTITY

The work performed under this contract by the Contractor shall be conducted by a separate corporate entity from its parent company(ies). The separate corporate entity must be set up solely to perform this contract and shall be totally responsible for all contract activities.

H.15 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS

Responsible Corporate Official

- (A) The contractor has provided a guarantee of performance from its parent(s) company in the form set forth in Section J Attachment entitled, Performance Guarantee Agreement.
- (B) DOE may contact, as necessary, the single Responsible Corporate Official from the Contractor signing the Performance Guarantee Agreement. The Responsible Corporate Official identified below shall be at an organizational level above the Contractor and shall have sole corporate authority and accountability for the performance of the contract to resolve any issues with DOE beyond the authority of the Project Manager.

Name: _____
Position: _____
Company/Organization: _____
Address: _____
Phone: _____
Facsimile: _____
Email: _____

- (C) Should the Responsible Corporate Official change during the period of the contract, the Contractor shall notify the Contracting Officer in writing within 30 days of any change.

The Contractor who provided by name and affiliation of each member of the Corporate Board of Directors will have corporate oversight. In the event any of the signatories to the Guarantee of Performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

DOE may contact, as necessary, any member of the Responsible Corporate Board of Directors, who is accountable for corporate oversight of the Contractor organization and key personnel.

Responsible Corporate Board of Directors (information required for each Board Member):

Name: _____
Position: _____
Company/Organization: _____
Address: _____

Phone: _____
Facsimile: _____
Email: _____

H.16 PERFORMANCE GUARANTEE

The Contractor is required by other provisions of this contract to organize a dedicated corporate entity to carry out the work under the contract. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated as an Attachment to Section J. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.17 RECOGNITION OF PERFORMING ENTITY

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

TO BE PROVIDED BY OFFEROR

- (b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in (a) above without the prior written approval of the CO.

H.18 ACCOUNTING FOR PERFORMING ENTITY

All financial data and planning of the entities comprising the performing entity, as identified in Section H, "Recognition of Performing Entity", shall be provided for at the same level of detail required of the prime Contractor. All actual financial data shall be included with the prime Contractor's input to the Financial Information System by the dates established by DOE. Actual manpower data will also be reported in a form and manner acceptable to DOE.

H.19 HOME OFFICE EXPENSES

Home office expenses, whether direct or indirect, relating to activities of the Contractor are unallowable, except as otherwise specifically provided in the contract or specifically agreed to in writing by the CO.

H.20 SEGREGATION OF COSTS

- (a) Whenever the contract contains a provision for an incentive for a portion of the work effort under the contract, the Contractor shall maintain separate accounts, by work authorization directive or other suitable accounting procedure, of all incurred segregable, direct costs of work, allocable to the work effort directly related to the incentive arrangement.

- (b) If the Contractor has initiated work pursuant to the clause entitled, Cost Reduction, included in this contract, that a proposal has been accepted, the Contractor, for each cost reduction incentive proposal, shall maintain separate accounts, by work authorization directive or other suitable accounting procedure, of all incurred segregable, direct costs, both changed and not changed, allocable to the changed work effort set forth in the applicable Cost Reduction Incentive Proposal.
- (c) The Contractor shall maintain all such accounts, required pursuant to the paragraphs above, in accordance with the clauses Access to and Ownership of Records of this contract, but, in no case, for a period of less than three years following the Government's determination of the applicable incentive fee.

H.21 APPROVAL OF EXPENDITURES

Whenever approval of other action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

H.22 REPORTING REQUIREMENTS

- (a) Work Breakdown Structure (WBS). Except as provided for elsewhere in the contract, the WBS, as approved by the Contracting Officer (CO), shall provide the basis for reports required under this subsection. The WBS shall be derived from the Performance Work Statement (PWS) of this contract and shall otherwise conform to any implementation guidance which may be provided by the CO.

- (b) A computer based scheduling system that collects and reports periodic costs and related schedule information shall be used by the Contractor. The system shall be compatible with the Department of Energy (DOE) Environmental Management (EM) systems reporting requirements. The system shall be used to collect budget, costs, schedule and other information from all participants funded by the WIPP operation. Budgets, actual and forecasted costs and schedules shall be input in such a manner that proprietary information between companies (i.e. rates) are not shared, or are shared with the appropriate controls (i.e. executing Proprietary Information Exchange Agreements between the parties). All WIPP funded participants shall be required to input budget, cost and schedule information into the system. Each participant shall be responsible for accountability of performance to and variance from plans.
- (c) Periodic Plans and Reports. The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the CO. Such reports are presented by WBS, Project Baseline Summary (PBS) and participant in formats to be determined jointly by the Contractor and the Contracting Officer or representative.
- (d) These periodic plans and reports shall be submitted at the interval, to the addresses and in the quantities specified by the CO or representative. Both hard copy and web- based posting are required. Where specific forms are required for individual plans and reports, the CO shall provide such forms to the Contractor. These reports shall primarily derive from the system described in paragraph (b) or be consistent with the information contained therein.
- (e) DOE will conduct an Earned Value Management System (EVMS) compliance review and an external independent review (EIR) of the Contractor's proposed project control system per DOE Order 413.1B to determine if the description and procedures meet the requirements of this contract clause. The Contractor shall be prepared to successfully complete the EIR and to successfully gain Earned Value Management System certification six months after contract award.
- (f) Plans and reports shall be prepared by the Contractor in such a manner as to provide for consistency with the contract PWS, the approved WBS, and PBS, the existing accounting structure and in correlation with data among the various plans and reports. The plans and reports expected to be submitted by the Contractor are described generally as follows and are subject to revision at any time by the CO:
 - (1) A General Management Status Report summarizes scope, schedule, cost status and plans including but not limited to:
 - (i) Trend reports to include cost (labor, material, overhead) and fees. Typically, performance management baseline reports segregate fee from other costs. Explanations of status cost and schedule variances from plans that are greater than thresholds defined by the CO or a representative are required. Analysis of historical data and trends shall also be provided.
 - (ii) Earned Value Management Reports with information regarding budgeted cost of work scheduled and work performed and actual cost, as well as cost and schedule performance indices, schedule performance against milestones and estimated costs and budgets at completion. "Stoplight" charts showing red,

- yellow and green indicators for performance shown by WBS, PBS and participants within well defined ranges assist management in assessing the performance against key indicators.
- (iii) Periodic Performance Measures including targets and actuals for performance measures, e.g., cubic meters of CH and RH TRU waste certified at generator sites, cubic meters of CH and RH waste disposed, periodic milestones to include WIPP site operations, Central Characterization Project (CCP), Transportation, regulatory and permitting actions.
 - (iv) Safety metrics such as Days Away Rate (DART) charts, Total Recordable Case Rates, Recordable Incident Rates, and Rolling Averages of such.
 - (v) Assessment of and continued monitoring of risks against a risk management plan.
 - (vi) Program Change Request (PCR) summary logs showing the submission and status of all PCR processed during the previous period.
 - (vii) Other information as recommended by the Contractor, government personnel or other interested parties as determined prudent.
- (2) Technical Reports by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.
 - (3) Other types of financial, project or operational reports as deemed necessary.
- (g) The Contractor shall schedule a periodic meeting to review the material prepared for the previous period. A representative of the Contractor shall lead the meeting. Meeting notice shall be distributed to provide adequate lead time from publishing the report for the government to review the material. An agenda shall be used, minutes and attendance be taken at each meeting. Records of these meetings and reports shall be kept during the period of performance of the contract and are subject to review at all times.
- (h) Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Control System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the PWS or Work Authorization Directives (WADs). The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer.
- (1) Incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the contract, in a timely manner;
 - (2) Reconcile estimated costs for those elements of the WBS identified in the contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:

- (i) Changes to the authorized work; and,
 - (ii) Internal re-planning in the detail needed by management for effective control.
- (3) Prohibit retroactive changes to records pertaining to work performed that will change previously-reported costs except for correction of errors and routine accounting adjustments. The Contractor shall maintain a record of error corrections and routine accounting adjustments and make available for review by the Government;
- (4) Prevent revisions to the contract estimated costs except for Government-directed or approved changes to the contractual effort; and
- (5) Document, changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- (i) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's cost collection, reporting and other systems including but not limited to invoices, payroll and other financial and planning documents.
- (j) The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when--
- (1) The value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, or
 - (2) The Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.
- (k) The Contractor shall be familiar with, and be capable of complying with the latest revisions of DOE Policies, Orders, Guides and Manuals series 413, Program and Project Management for Capital Assets.

H.23 WORK AUTHORIZATION

- (a) Prior to the start of each Fiscal Year, DOE shall provide the Contractor program execution guidance in sufficient detail to develop an estimated cost, scope, and schedule. The Contractor shall submit to the CO or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work to be performed during the next Fiscal Year.
- (b) The Contractor and DOE shall mutually establish a budget of estimated costs, detailed description of work, and schedule of performance for each task at the lowest level of the WBS. Ideally, this budget reflects congressional direction, when available. When not available at the beginning of the fiscal year, this budget shall be set to be equal or less than dollar value of the nearest expected congressional budget. The established description of work, estimated costs, and schedule of performance shall be incorporated into work authorization directives. Work authorization directives, signed by the Contractor and issued by the CO are incorporated by reference into this contract.

- (c) If agreement cannot be reached on the scope, schedule, and estimated cost for the work authorization directives, the CO shall issue unilateral work authorization directives pursuant to this clause.
- (d) No activities shall be authorized and no costs incurred until either the CO has issued work authorization directives or the CO has issued direction concerning continuation of activities.
- (e) The work authorization directives authorizing the Contractor to proceed with performance shall be provided to the Contractor by the CO. Each work authorization directive so issued will include, as a minimum, the following:
- Authorization number and effective date;
 - Description of work;
 - Cost, schedule, and other reporting requirements including appropriate performance objectives, metrics, schedules, and milestone dates
 - Date of issue;
 - Contractor's signature; and
 - CO's signature.
- (f) **Modification of Work Authorization Directives.** The CO may at any time and without notice issue changes to the work authorization directives within the PWS of the contract requiring additional work, or directing the omission of, or changes to, the work. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (b) of this clause shall be submitted by the Contractor in accordance with paragraphs (a) and (b) of this clause. This is required upon receipt of annual appropriation in the event of operations under a continuing resolution for any length of time in the current fiscal year.
- (g) The Contractor shall notify the CO immediately whenever the cost incurred to date plus the projected cost to complete the work on any work authorization directive is expected to exceed or under-run the estimated cost by a percentage of the work authorization directive to be determined by the CO (typically 10%). In this case, the Contractor shall submit a proposal for a change in the work authorization directive in accordance with paragraphs (a) and (b) of this clause.
- (h) **Expenditure of Funds and Incurrence of Cost.** The performance of work and the incurrence of cost in the execution of the PWS of this contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the provisions of the Contract Clause entitled "Obligation of Funds."
- (i) **Responsibility to achieve Environment, Safety, Health, and Security Compliance.** Notwithstanding the other provisions of this subsection, the Contractor has, in the event of an emergency, authority to take corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the CO within 24 hours after such action was initiated and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraph (a) and (b) of this subsection.

H.24 WITHDRAWAL OF WORK

- (a) The CO reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Government Contractor or to have the work performed by Government employees.
- (b) DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C "Performance Work Statement" to be removed (de-scoped) from the contract in order to contract directly for the specific work activities.
- (d) If withdrawn work has been authorized under an annual work authorization directive, the work shall be terminated in accordance with the procedures in the Contract Clause entitled, Termination (Cost Reimbursement). If work has not been authorized under a work authorization directive and there is no impact on the Contractor's staffing, the fee amount set forth in the Schedule shall be equitably adjusted, under the Clause entitled, Changes – Cost-Reimbursement. If the Contractor's staffing is impacted, the work shall be terminated in accordance with the procedures in the Contract Clause entitled, Termination (Cost Reimbursement).
- (e) If any work is withdrawn by the CO, the Contractor agrees to fully co-operate with the new entity performing the work and to provide whatever support is required pursuant to the Contract Clause in Section H entitled, Technical Direction – DEAR 952.242-70 (DEC 2000).

H.25 WORK FOR OTHERS

- (a) Subject to the prior written approval of the CO, and in compliance with the other terms and conditions of this contract, the Contractor may perform activities for Non-Federal entities or other Federal Agencies, under the contract, involving the use of equipment, facilities, or personnel. The Contractor's request for DOE approval shall set forth in detail the nature of the outside activities to be performed; the equipment, facilities or personnel required; and the financial and contractual arrangements proposed to pay for the cost of such work. The CO shall consider such a request, being guided, among other factors, by the current or future needs of DOE's programs for the equipment, facilities, or personnel to be utilized in the performance of such outside activities. Primary considerations in approving such work are that the proposed work will not place the Contractor in direct competition with domestic non-Federal entities; will not adversely impact execution of the Contractor assigned programs; and will not create a potentially detrimental future burden on commitment of DOE resources. If the CO approves such a request, the Contractor and DOE shall agree upon the terms and conditions which would apply to such work. This agreement may provide for receipt by the Government of all or part of such sum as represents the payment to be received by the Contractor for such outside activities; provided, however, that DOE may contribute the use of certain equipment, facilities, or personnel for the performance of such outside work if it determines that it desires to foster the activity in some measure. Except as otherwise approved by DOE, all clauses of this contract shall be deemed to be applicable to the performance of such work. This clause shall not be construed as amending or superseding the requirements of the PWS.

- (b) The Contractor shall promptly advise the CO of any advance notices of, or solicitations for, a major system acquisition requirement received from other Federal agencies pursuant to FAR 34.005 which would logically involve DOE facilities or resources operated or managed by the Contractor. The Contractor shall not respond to or otherwise propose to participate in response to the requirements of such solicitations unless the Contractor has obtained written approval of the CO.

H.26 PERFORMANCE EVALUATION AND MEASUREMENT PLAN (PEMP)

A PEMP, Attachment C in Section J, developed by the CO, with Contractor input, shall document the process by which the Contractor's performance will be evaluated. The Parties will strive to reach mutual agreement on expected business, operational and technical performance and will work together to develop performance objectives, performance-based incentives and associated measures and targets tied to key end products and DOE strategic goals and objectives. In the event the parties fail to agree on the requirements, the CO reserves the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate Contractor performance. The PEMP shall be finalized, whether bilaterally or unilaterally, prior to the start of an appraisal period. Only the CO may revise the PEMP, consistent with the PWS, during the appraisal period of performance. No changes will be made to the PEMP or associated documents with less than 60 days remaining in the appraisal period. Where the Contractor becomes aware that they will not meet a completion task metric, the Contractor shall notify DOE of its impending failure in order to allow the Government to mitigate the consequences of the impending failure to meet the completion task metric. The Contractor shall not receive fee for any completion task metrics that are not completed in accordance with contract requirements.

H.27 EMPLOYEE CONCERNS PROGRAM (ECP)

The Contractor shall submit an implementation plan to the CO for approval within 90 days of contract award that describes an Employee Concerns Program (ECP) that implements all programmatic requirements in DOE Order 442.1A, and DOE Guide 442.1-1, Employee Concerns Program, and all superseding versions.

H.28 ENVIRONMENT, SAFETY, AND HEALTH (ES&H)

- (a) The Contractor shall comply with the existing system description document in accordance with the I Clause DEAR 970.5223-1 entitled "Integration ES&H into Work Planning and Execution." The Contractor shall submit an update to the existing Integrated Safety Management System (ISMS) Description Document within 60 days of contract award and thereafter each year on September 1, for the following fiscal year. Any changes to the ISMS Description Document after the CO's or designee's initial approval, shall be approved by the CO or designee.
- (b) The initial update of the ISMS Description Document shall include any revisions to those ES&H Plans/Programs (i.e., Quality Assurance Plan, Radiation Protection Plan, Worker Safety and Health Program, etc.) approved by DOE as required by the clause entitled Laws, Regulations, and DOE Directives.
- (c) This contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to

facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety requirements and other parameters for Category 2 nuclear facilities and other facilities as directed by the CO to ensure adequate protection of the workers, the public, and the environment. Updates and changes to any approved Authorization Agreements(s) shall be subject to CO approval.

H.29 ENVIRONMENTAL PERMITS AND APPLICATIONS

- (a) In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor shall sign Resource Conservation and Recovery Act (RCRA) permits and applications as co-operator. DOE shall sign RCRA permits and applications as co-operator and owner if such signature is required by law or Regulatory Agency. The Contractor and other Site Contractors shall sign all other permits and applications as required by law or Regulatory Agency.
- (b) To clarify the resulting obligations under the contract, the parties agree to the following:
 - (1) DOE agrees that the Contractor shall not incur any liability above and beyond that contemplated by the contract by reason of the Contractor's execution of environmental permits.
 - (2) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. In no event shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
 - (3) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor.
- (c) The Contractor will be responsible for interfacing with other Site Contractors, as appropriate, when it pertains to permit applications, environmental monitoring, and environmental reporting. DOE will be fully integrated into these processes. Environmental monitoring, reporting, inspection, and control requirements will be defined in either the facility-specific permits issued by the state or in site-wide DOE-approved plans.
- (d) The Contractor will be responsible for reviewing and approving deliverables related to site-wide permits, permit-related plans, and exemption packages developed pursuant to State and Federal environmental regulations, and for forwarding the applications to the state for final approval, as appropriate. For each permit associated with this work-scope, the Contractor will perform the necessary calculations, prepare required reports, design drawings and application forms, and submit the documentation to DOE for review and, when applicable, approval.
- (e) The Contractor shall sample all release and emission points, as defined in the applicable permits or as directed by DOE, to support environmental monitoring programs. The Contractor shall monitor impacts on site-wide environmental media. The Contractor shall ensure that environmental monitoring data is collected pursuant to standards and procedures stipulated in the permit and/or applicable regulations. The Contractor shall ensure that all analytical data is collected and analyzed according to applicable methods and standards, and that field and laboratory quality controls and measures are implemented

according to applicable standards stipulated in the facility permit. The Contractor shall provide to DOE environmental monitoring data to support operating permits, for which the Contractor has responsibility.

H.30 PRICE-ANDERSON AMENDMENTS ACT (PAAA) NONCOMPLIANCE

The Contractor shall establish an internal Price-Anderson Amendments Act (PAAA) noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price-Anderson Amendments Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.31 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION(S) AND FINES AND PENALTIES

- (a) The Contractor shall accept, in its own name, notices of violation(s) (NOV) and fines and penalties if issued directly to the Contractor by Federal or State regulators resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be governed by the provisions of the Section I Contract Clause DEAR 970.5232-2 entitled, Payments and Advances. The Contractor shall notify the CO promptly when it receives service from the regulators of NOVs and fines and penalties. If an NOV or a fine/penalty is provided to the Contractor and the Contractor is not responsible for the cited function under this contract, the Contractor shall immediately notify the Government and the regulator. Any NOVs, fines or penalties associated with any act or failure to act before the Contractor assumed responsibility for the site shall be processed in accordance with the Contract Clause entitled, Pre-existing Conditions.
- (b) The Contractor shall be free to conduct negotiations with regulators regarding NOVs, fines and penalties issued directly to the Contractor; however, the Contractor shall not make any commitments or offers to regulators which would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the CO or his authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

H.32 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

H.33 PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS

Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the Sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-Made.

H.34 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Any possible violation of the prohibition against falsely labeling products as made in America, and the entity is not on the List of parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported through the Contracting Officer. The report of an entity in violation of the prohibition against falsely labeling products as American-Made should be submitted to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

H.35 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE

In the event of a termination for default or termination for convenience, DOE may take possession of all technical information, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary for design, construction, operation, cleanup and closure activities associated with the PWS, subject to the Rights in Data - Facilities clause of this contract. Technical information includes, but is not limited to, designs, operation manuals, flowcharts, software, work progress reports, and any other information necessary for design, construction, and operation activities associated with the WIPP PWS. Upon request, the Contractor agrees to grant to the Government an irrevocable, nonexclusive, paid-up license in and to any intellectual property, including any technical information and limited rights data, which are owned or controlled by the Contractor, at any time through completion or termination of this contract and which are necessary for the continued design, construction, and operation activities associated with the PWS, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license to future Contractors for the design, construction, and operation activities associated with the PWS. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed. In addition, the Contractor will take all necessary steps to assign permits, authorizations, and any licenses in any third party intellectual property for the design, construction, and operation activities associated with the PWS to DOE or such other third party as DOE may designate. The obligations under this clause are not dependent upon any payments by the Government. The obligations arise immediately upon the request of the CO.

H.36 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

On October 1, 2012, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract No. DE-AC29-01AL66444.

H.37 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

Documents originated by the Contractor or furnished by the Government to the Contractor in connection with this contract may contain Unclassified Controlled Nuclear Information as

determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives.

H.38 PERFORMANCE OF WORK AT DOE FACILITIES AND SITES OTHER THAN WIPP

When performing work under this contract at DOE facilities and sites other than the Waste Isolation Pilot Plant (WIPP), the Contractor shall comply with and follow the List of Applicable Directives in Section J Attachment of the contract. In addition, the contract shall comply with any additional directives which have been established for the DOE Prime Contractor at the DOE facility/site and that are applicable to the work being performed and to associated hazards at the particular facility or site.

H.39 DEFENSE NUCLEAR FACILITIES SAFETY BOARD

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect contract work. Based on the Contracting Officer's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.40 CONFIDENTIALITY OF INFORMATION

(a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties, unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- (1) Information which, at the time of receipt by the Contractor, is in public domain;
- (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

(b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or information data it is given access to or is furnished, restricting use and disclosure of the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clause shall flow down to all appropriate subcontracts.
- (f) Technical data is addressed in DEAR 970.5204-82.

H.41 TRAVEL RESTRICTIONS

- (a) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
 - (1) Federal Travel Regulations (FTR) for travel within the 48 states;
 - (2) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
 - (3) Standardized Regulations (SR) for travel allowances in foreign areas.

The definitions of lodging, meals, and incidental expenses, and special or unusual situations of the above regulations are applicable to Contractor travel.
- (b) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

H.42 LOBBYING RESTRICTIONS

- (a) The Contractor shall not commit any funds obligated on this award to be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in applicable statute and regulation.

- (b) Any travel associated with legislative monitoring must be approved in advance by the CO.

H.43 LITIGATION MANAGEMENT PROCEDURE

- (a) As required in the clause entitled "Recognition of Performing Entity" in Section H, the Contractor shall prepare a Management of Litigation Procedure(s) which shall be submitted to the CO or designee for approval within 60 days after the award of the contract, and shall be updated thereafter as required.
- (b) The CBFO Counsel is the authorized designee of the CO for approval of this Plan.
- (c) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE approved Contractor legal management procedure(s) (including cost guidelines) as such procedure(s) may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

H.44 INFORMATION TECHNOLOGY (IT)

All information produced in support of this contract is deemed the property of the government and must be processed and protected, commensurate with risk, in compliance with government laws, Office of Management and Budget (OMB) mandates, and departmental policy.

Cyber Security

The Contractor shall develop a Cyber Security Program to meet the requirements DOE Order 205.1A – Department of Energy Cyber Security Management Program and the Environmental Management Program Security Plan.

The Contractor shall evaluate the Information System or Systems it will operate or develop in accordance with FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION FIPS 199, Standards for Security Categorization of Federal Information and Information Systems. The determination of the system categorization shall be approved by the Contracting Officer. This categorization will determine the level of controls required in the development of the Contractor's cyber security program. Along with submittal of the System Categorization, the Contractor shall develop and submit a Computer Security Threat and Vulnerabilities Statement and Computer Security Risk Assessment and Mitigation Document within 90 days of contract award. Additional deliverable requirements will be based on these documents.

Based on the System Categorization the Contractor shall develop a System Security Plan in accordance with the Under Secretary of Energy's Program Cyber Security Plan and the Environmental Management Program Security Plan. The Contractor shall implement the Management, Operational, and Technical Controls specified in these documents.

Authorization to Operate:

The DOE will notify the Contractor of the appointment of a Designated Approval Authority (DAA). The DAA will authorize the full implementation of the Contractor's IT systems. The Contractor will be subject to the reviews and system testing described in the requirements

and the results of these will be presented to the DAA for review. If the results of the review are satisfactory, the DAA may issue declaration of an "Authority to Operate" (ATO) which will allow the Contractor to fully operate their IT systems within a specified time. The ATO will also specify the provisions for the continuous monitoring of the Contractor's IT Systems. If the Contractor's systems are not fully compliant but do meet the minimum standard for operations, the DAA may issue conditions, terms, or limitations on the operations of the Contractor's IT systems until they are fully compliant. These will be specified in the ATO.

If the results of the reviews and system test are not satisfactory, the DAA may deny or rescind a previous ATO with a Denial of Authorization to Operate (DATO). If the DAA issues a DATO, all costs associated with any mission delay will be the responsibility of the Contractor.

Risk Portfolio Manager:

EM's Risk Portfolio Manager (RPM) is an application developed by Environmental Management to standardize the development of IT system accreditation packages that support the DAA's decision in issuing an ATO. RPM is a central repository for cyber security documentation and Plans of Actions and Milestones (POA&M). RPM is pre-populated with DOE cyber security control requirements and will assist the Contractor in the development of required cyber security documentation. It will be the enterprise central repository for all required Certification and Accreditation (C & A) documents and artifacts. OMB requires that agencies upload information electronically to OMB. RPM is used to meet this requirement. The Contractor will be given access to the system and is required to provide updates in a timely manner.

Monitoring of IT Networks/Systems:

The Federal Government, the Department of Energy, and the Office of Environmental Management may monitor Contractor networks/systems used to conduct the EM mission for malicious activity and performance measures at any time. Hardware and software may be deployed on Contractor networks for this purpose. The installation, support and response to issues developed from these systems are within the scope of this contract.

Enterprise Architecture:

Federal law requires that agencies develop and document an Enterprise Architecture (EA). The architecture encompasses the missions and business processes that support each mission. The Contractor shall develop an Enterprise Architecture that describes the Contractor's IT systems in accordance with DOE Order 200.1A. All Federal IT investments are documented within the budget process by a form Exhibit 53 or form Exhibit 300, in accordance with OMB criteria. As part of the Enterprise Architecture, the Contractor shall develop an application inventory which is mapped to the appropriate Exhibit 53 and 300. The Contractor shall be required to provide data and information in support of developing the Exhibit 53 and or Exhibit 300 documentation.

EM utilizes an online system that the Contractor may be required to log on to and provide specific budget and cost data. Costs accumulated in association with IT and Cyber Security must be identified as such and be identifiable from a contract management perspective. See the specific sections of OMB Circular No. A-11 for further information or clarification of Exhibits 53 and 300.

Other Requirements:

The DOE orders and Program Cyber Security Plan provide for development of Policies, Procedures or Instructions to documents the Cyber Security Program. These documents may be required to be provided to the DAA to support development of an ATO for the Contractor's IT systems. The extent of the request of documents from the Contractor will rest on Risk Determination and other factors. At such time as the risk determination has been completed a list of required deliverables will be developed.

Data calls: As an integral part of compliance with DOE Order 205.1A, EM periodically issues data calls requesting specific information about the Contractor's system. Responding to these data calls in a timely manner is within the scope of this contract.

H.45 ELECTRONIC SUBCONTRACTING REPORTING SYSTEM

- (a) The Offeror's subcontracting plan shall assure that Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports are submitted under the Electronic Subcontract Reporting System (eSRS), including all sub tiers.
- (b) The Contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702.

H.46 LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will

furnish such additional information as may be required from time to time by the Contracting Officer.

H.47 DEPARTMENT OF LABOR WAGE DETERMINATIONS

When the Service Contract Act is applicable to the performance of this contract, the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination Number 2005-2511 Rev. 13, dated 6/21/10. Copies of the wage determinations and the existing Collective Bargaining Agreement (CBA) are attached to this contract (Section J, U.S. Department of Labor Wage Determination and Collective Bargaining Agreement). Revised wage determinations from the Department of Labor shall be incorporated into this contract. The Contractor and/or subcontractor shall comply with the revised wage determination for Service Contract Act covered employees.

H.48 RECORDS MANAGEMENT

The Contractor shall conduct records management in accordance with Title 44 USC, Chapters 21, 29, 31, 33, and 35; 36 CFR, Chapter 12, Subchapter B (Records Management); DOE O 243.1 (Records Management Program) and DOE O 243.2 (Vital Records), and any other DOE requirements as directed by the CO. These functions include, but are not limited to: tasks associated with creation/receipt, maintenance, storage/preservation, protecting, scheduling, indexing and dispositioning active and inactive records; retrieving records from on- and off-site storage facilities, and supporting ongoing Freedom of Information Act (FOIA), Privacy Act, Energy Employee Occupational Illness Compensation Program (EEOICPA), Former Worker Medical Screening Program (FWP), Chronic Beryllium Disease Prevention Program (CBDPP), congressional inquiries, and legal discovery requests.

The Contractor shall ensure records classified as Quality Assurance (QA) records under ANSI/ASME NQA-1 (Requirement 17), if applicable, are categorized appropriately and managed in accordance with 36 CFR Chapter 12, Subchapter B and are traceable to the applicable item, activity or facility.

The Contractor shall implement records management controls to ensure that records in electronic information systems can provide adequate and proper documentation for as long as the information is needed. The Contractor must incorporate controls into the electronic information system or integrate them into a recordkeeping system that is external to the information system itself (see 36 CFR 1236 for specific electronic records management requirements).

All records (see 44 USC 3301 for statutory definition of a record) acquired or generated by the Contractor in performance of this contract, except for those defined as Contractor-owned (Section I clause entitled "DEAR 970.5204-3 Access to and Ownership of Records"), and including, but not limited to, records from a predecessor Contractor (if applicable) and records described by the contract as being maintained in Privacy Act systems of records, shall be the property of the Government.

The Contractor shall preserve and disposition records in accordance with NARA-approved records disposition schedules (DOE Record Disposition Schedules), as posted on the DOE Office of the Chief Information Officer (OCIO) Records Management web page. *Note: Records Retention standards are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor (DEAR 970.5204-3).*

The Contractor shall prepare and submit for DOE approval, and execute the approved Records Management Plan consistent with records management regulations, including Section I Clause entitled, "DEAR 970.5204-3, Access to and Ownership of Records, and Privacy Act Systems of Records". The Records Management Plan is a high-level program document that shall describe, at a minimum: a clear delineation between Government-owned and Contractor-owned records; how the Contractor will manage all life-cycle phases of Government-owned records, including specialty records like electronic and e-mail, and audiovisual; the Contractor organization in charge of the records management program; provision of records management training to all Contractor personnel; the safeguarding, protection and maintenance of records (including audiovisual, electronic, records containing sensitive information, and/or classified, if applicable); the use of DOE Records Disposition Schedules; management of quality assurance records under NQA-1; the Contractor's procedures for final disposition of records (e.g., via transfer to a Federal Records Center (FRC), destruction, or transfer to another DOE Contractor); creation and maintenance of administrative records; and the Contractor's procedures for implementation of the records management program as a whole, including relationships with other programs that cannot function properly without sound records search and retrieval capabilities (e.g., processing claims received by the Department of Labor pursuant to the EEOICPA, FOIA, etc.). The Records Management Plan shall be submitted to the CO for review/approval by DOE within 60 days of contract award.

The Contractor shall prepare and submit for DOE approval, and execute the approved file plan consistent with records management regulations. A file plan is a comprehensive outline that includes the records series title and description, active file locations, file arrangement, file cutoff, retention period, file transfer instructions, disposition instructions, and other specific instructions that provide guidance for effective management of records, including vital records. The file plan shall be submitted within six months of contract award, for review/approval by DOE, to ensure records are being managed and scheduled properly; any revisions to the file plan shall be submitted on an annual basis.

The Contractor shall prepare and submit for DOE approval, and execute the approved Records Disposition Plan consistent with records management regulations. The Records Disposition Plan shall document the Contractor's disposition process which shall include processing records to storage (e.g., on-site, commercial and/or the FRC) and the destruction process (e.g., review process, etc.). This plan shall be developed and submitted for DOE approval prior to any records disposition activities or within six months of contract award (whichever comes first) for review/approval by DOE, to ensure records are being properly dispositioned; any revisions to the disposition plan shall be submitted to DOE prior to implementation.

The Contractor shall ensure records generated in the performance of the contract containing personal information that is routinely retrieved by name or other personal identifier are classified and maintained in Privacy Act systems of records (SOR) in accordance with Federal Acquisition Regulation clause 52.224-2, Privacy Act (APR 1984) and DOE O 206.1 DOE Privacy Program. The Contractor shall prepare and submit for DOE approval, in accordance with Federal Acquisition Regulation clause 52.224-2, Privacy Act (APR 1984) and DOE O 206.1 DOE Privacy Program: (1) a list of the systems of records that the Contractor will generate that fall under the Privacy Act and (2) note the design, development, or operation work that will be performed, and (3) the responsibility of each system. See 74 Fed. Reg. 994, January 9, 2009 for the most recent compilation of DOE's Privacy Act Systems of Records. This list shall be updated and approved on an annual basis.

The Contractor shall create and maintain a NEPA Administrative Record for any NEPA documents it may generate. A NEPA Administrative Record is a compilation of all documents which are

considered or relied on in the decision making process. Materials that are typically part of the Project record which have been identified for inclusion in the AR shall be duplicated in their entirety for both the Project records and the AR. The only exceptions to this would be very large sets of materials (e.g., the complete set of EIS references) which should be placed in the AR with a color page "flag" placed in both the Project record and the AR identifying that the sole hard copy is in the AR.

Upon contract completion or termination, the Contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor Contractor, its designee, or other destinations, as directed by the Contracting Officer.

H.49 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)

The Contractor shall provide support of the EEOICPA established under Title XXXVI of the National Defense Authorization Act of 2001 (Public Law 106-398). The Contractor shall provide records in accordance with the Section I Clause entitled, DEAR 970.5204-3, Access to and Ownership of Records, in support of EEOICPA claims and the claim process under the EEOICPA.

The Contractor shall:

- (A) Verify employment and provide other records which contain pertinent information for compensation under the EEOICPA. The Contractor shall provide this support for itself and any named subcontractors' employees.
- (B) Provide reports as directed by the U.S. Department of Energy (DOE), such as costs associated with EEOICPA.
- (C) Provide an EEOICPA point-of-contact; this employee shall attend meetings, as requested by the U.S. Department of Energy Carlsbad Field Office (DOE- CBFO).
- (D) Locate, retrieve and provide a minimum of two (2) copies of any personnel and other program records as requested.
- (E) Perform records research needed to complete the Department of Labor (DOL) claims or to locate records needed to complete the claims.
- (F) Perform/coordinate records declassification activities required for the processing of claims forms.
- (G) Keep Federal Compensation Program Act (FCPA) information current on EEOICPA claims activities.
- (H) Ensure costs information is input to the FCPA electronic reporting system by the 10th of each month.
- (I) Ensure all EEOICPA claims received are completed and returned to DOE within 45 calendar days of the date entered in the FCPA electronic reporting system. (The EEOICPA costs shall not be funded with EM funds, and the Contractor shall

separately track EEOICPA costs and provide a monthly claims activity report of funds spent on EEOICPA claims processing).

The FCPA electronic reporting system will be provided to the Contractor.

H.50 SALE OF PERSONAL PROPERTY

If the Contractor acquires property under this contract that is later determined to be excess/surplus property and the Contractor receives approval from the Contracting Officer to sell such property, the proceeds from the sale shall be handled as a credit to the Contractor's contract cost. The Contractor shall issue a credit on its voucher that is submitted to the U.S. Department of Energy for reimbursement of cost documenting the sale of such property.

H.51 CONTRACTOR COMMUNITY COMMITMENT

DOE and the Contractor are charged with carrying out the critical mission of the Waste National Transuranic Waste Program (NTP) and the Waste Isolation Pilot Plant (WIPP). The WIPP has benefited from its location in southeastern New Mexico and from the workforce and other resources provided by the region. In recognition of these benefits, the Contractor shall take meaningful actions to implement its community commitment as described in DEAR 970.5226-3 which is included in Section I of the contract.

DOE will not prescribe which community commitment activities the Contractor may engage in but identifies the activities listed in (A), (B), (C) and (D) below as worthwhile endeavors for its consideration. The list is not intended to preclude other constructive community activities.

The Contractor shall submit to DOE an annual plan for the community commitment activities and report on program success semi-annually.

The Contractor may use fee dollars for these activities or other community commitment activities as it deems appropriate. All costs to be incurred by the Contractor for community commitment activities are unallowable and non-reimbursable under the contract.

(A) Regional Educational Outreach Programs

The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of WIPP employees to schools, colleges, and universities.

The Regional Educational Outreach Programs could involve providing Contractor employees an opportunity to improve their employment skills and opportunities by an educational assistance allowance, provision for outside training programs either during or outside regular work hours, or executive training programs for non-executive employees. This could also involve participating in activities that foster relationships with regional educational institutions and other institutions of higher learning or encouraging students to pursue science, engineering, and technology careers.

(B) Regional Purchasing Programs

The Contractor could conduct business alliances with regional vendors. These alliances may include training and mentoring programs to enable regional vendors to compete effectively for WIPP subcontracts and purchase orders and/or assistance with the development of business systems (accounting, budget, payroll, property, etc.) to enable regional vendors to meet the audit and reporting requirements of the WIPP and DOE. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy WIPP's needs.

The Contractor could coordinate and cooperate with the Chambers of Commerce, Small Business Development Centers, and like organizations, and make prospective regional vendors aware of any assistance that may be available from these entities.

DOE encourages the use of regional vendors in fulfilling WIPP requirements.

The Contractor shall encourage its subcontractors, at all tiers, to participate in these activities.

(C) Community Support

The Contractor may directly sponsor specific local community activities or sponsor individual employees available to work with a specific local community activity. The Contractor may provide support and assistance to community service organizations. The Contractor may support strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of its Carlsbad, New Mexico based organization. The Contractor may support other community involvement activities as it deems appropriate.

(D) Business Development

The Contractor is encouraged to negotiate with the local community to bring additional operations and facilities to Southeastern, New Mexico. DOE supports these initiatives and will work with the Contractor to facilitate the establishment of these operations.

H.52 COMPLIANCE WITH INTERNET PROTOCOL, VERSION 6 (IPv6), IN ACQUIRING INFORMATION TECHNOLOGY (IT)

- (a) This contract may involve the acquisition of IT that uses Internet Protocol (IP) technology. The Contractor agrees that (1) all deliverables that involve IT that use IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor agrees to (1) obtain the CO's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008; and (3) have IPv6 technical support for development and implementation and fielded product management available.
- (b) Should the Contractor find that any future statements of work or specifications provided to the Contractor do not conform to the IPv6 standard, it must notify the CO of such nonconformance and act in accordance with instructions of the CO.

- (c) The Contractor shall identify an employee to act as a liaison with the DOE HQ Chief Information Officer where needed. The Contractor shall also refrain from waiving any requirement unless the waiver has been approved in advance in writing/email by the CO. The Contractor shall provide a copy of any waiver to the CO within 45 days of its execution.

H.53 TRANSITION TO FOLLOW-ON CONTRACT

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above:

That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor Contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits. After selection by the Government of any successor Contractor, the Contractor and such successor Contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor Contractor to cover each phase of the scope of work covered by the contract. A proposed date by which the successor Contractor will assume responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor Contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the CO's direction and approval. This clause shall apply to subcontracts as approved by the CO. The Contractor shall be reimbursed for all reasonable phase-in and phase-out costs, i.e., costs incurred within the agreed period after contract expiration that result from phase-in and phase-out operations.

H.54 PARTNERING

In order to most effectively accomplish this contract, the Government proposes to form a cohesive partnership with the Contractor. It is a way of doing business based upon trust, dedication to common goals, and an understanding and respect of each other's expectations and values. The process creates a teambuilding environment which fosters better communication and problem solving, and a mutual trust between the participants. These key elements create a climate in which issues can be raised, openly discussed, and jointly settled, without getting into an adversarial relationship. In this way, partnering is a mindset, and a way of doing business. It is an attitude toward working as a team, and achieving successful project execution. This endeavor seeks an environment that nurtures team building cooperation, and trust between the Government and the Contractor. The partnership strives to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget, and on schedule.

Participation in the partnership will be totally voluntary by the parties. Any cost associated with effectuating this partnership will be agreed to by both parties and will be included in the contract price. The U.S. Army Corps of Engineers has championed partnering and their guidelines will be utilized in organizing partnering meetings and establishing a partnering agreement.

H.55 INSURANCE – WORK ON A GOVERNMENT INSTALLATION

The following kinds and minimum amounts of insurance are required during the performance of this contract:

- (a) Worker's Compensation and Employer's Liability Insurance:
 - (1) The amount required by the State of New Mexico under applicable Worker's Compensation and occupational disease statutes
 - (2) Employer's liability insurance in the amount of \$500,000.
- (b) General Liability Insurance. Bodily liability coverage written on the comprehensive form of policy of at least \$1,000,000 per occurrence.
- (c) Automobile Liability Insurance. Coverage shall be listed on the comprehensive form of the policy. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$500,000 per person and \$1,000,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage.
- (d) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

H.56 DOE-H-1005 WORKER'S COMPENSATION INSURANCE

- (a) The Contractor shall maintain workers' compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the CO and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.
- (b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless a different arrangement is approved by the CO.
- (c) The Contractor shall submit to the CO an annual evaluation and analysis of workers' compensation cost as a percent of payroll in comparison with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the CO. The Contractor's self evaluation shall discuss:
 - (1) Periodic audits of claims servicing units; and,
 - (2) The reasonableness of self-insurance reserves and methods and assumptions used to closeout claims or losses to present value.
- (d) The Contractor, if it is a state institution covered under a corporate workers' compensation arrangement, shall provide the CO with a copy of the account statements including deposits, earnings, payments, losses, and administrative fees by the Contractor's financial institution on no less than an annual basis.
- (e) The Contractor shall obtain approval from the CO before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the CO.

PART IV – REPRESENTATIONS, CERTIFICATIONS, AND INSTRUCTIONS

SECTION M

EVALUATION FACTORS FOR AWARD

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PART IV – REPRESENTATIONS, CERTIFICATIONS, AND INSTRUCTIONS

SECTION M

EVALUATION FACTORS FOR AWARD

M.1 EVALUATION OF PROPOSALS

- (a) DOE has established a Source Evaluation Board (SEB) to evaluate the proposals submitted for this procurement using the criteria in Section M. Proposals will be evaluated by the SEB in accordance with the policies and procedures contained in the Federal Acquisition Regulations (FAR) Part 15 and DEAR Part 915. The Source Selection Official (SSO) will select an Offeror for contract award using the best value analysis described in Section M.
- (b) The Offeror must furnish adequate and specific information in its response. A proposal will be eliminated from further consideration before the evaluation if the proposal is so grossly and obviously deficient as to be totally unacceptable on its face. For example, a proposal will be deemed unacceptable if it does not represent a reasonable effort to address itself to the essential requirements of the RFP, or if it clearly demonstrates that the Offeror does not understand the requirements of the RFP. In the event a proposal is rejected, a notice will be sent to the Offeror stating the reason(s) that the proposal will not be considered for further evaluation under this solicitation.
- (c) In accordance with L-2, Instructions to Offerors-Competitive Acquisition, the Government intends to evaluate proposals and award a contract without discussions with Offerors. The Government reserves the right to conduct discussions if the CO later determines discussions to be necessary. Any exceptions or deviations by the Offeror to the terms and conditions stated in this solicitation for inclusion in the resulting contract may make the offer unacceptable for award without discussions. If an Offeror proposes exceptions to the terms and conditions of the contract, the Government may make an award without discussions to another Offeror that did not take exception to the terms and conditions of the contract.
- (d) As part of the evaluation process, a finding will be made whether any possible Organizational Conflict of Interest (OCI) exists with respect to each Offeror or whether there is little or no likelihood that such conflict exists. In making this determination, the CO will consider the Offeror's representation and disclosure statement required by the Section K provision entitled "DEAR 952.209-8 Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services." Subparagraph (c)(1) of DEAR 952.209-8 requires a statement, if applicable, from the Offeror of any past, present, or currently planned financial, contractual, organizational, or other interests relating to the SOW. The Offeror should note that subparagraph (c)(1) requires that the Offeror provide enough information in the statement to allow a meaningful evaluation by the Government of the potential effect of the interest on the performance of the SOW. For any actual or significant potential organizational conflict of interest, the Offeror shall also submit a plan of actions/activities to avoid, neutralize, or mitigate such

conflict. An Offeror with no OCI or OCI which can be appropriately avoided, mitigated, or neutralized, will be considered for award.

- (e) Federal Law prohibits the award of a contract under a national security program to a company owned by an entity controlled by a foreign government unless the Secretary of Energy grants a waiver. In making this determination, the Government will consider the Offeror's certification required by the Section K provision entitled "DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)" for the use of Certificate Pertaining to Foreign Interest", Standard Form 328.

M.2 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA

The proposals will be adjectivally rated using information submitted by the Offerors on the four technical evaluation criteria below. As described in Sections M.2 and M.3 above, the evaluation criteria are as follows:

- (a) Technical Evaluation Criteria
 - (1) Key Personnel and Organizational Structure
 - (2) Management Approach
 - (3) Relevant Experience
 - (4) Past Performance

Key Personnel and Organizational Structure, Management Approach, Relevant Experience, and Past Performance will be considered equal in importance. Areas within an evaluation criterion are not sub-criteria and will not be individually rated but will be considered in the overall evaluation for that particular evaluation criterion.

- (b) Price

In determining best value to the Government, the adjectival ratings for the technical factors, when combined, will be considered significantly more important than price.

M.3 EVALUATION CRITERIA

Each Offeror's proposal will be evaluated against the following technical evaluation criteria, equally important:

- 1) Key Personnel and Organizational Structure,
- 2) Management Approach,
- 3) Relevant Experience, and
- 4) Past Performance.

The proposed fee and proposed transition cost and fee will not be individually rated or scored, but will be evaluated with respect to cost reasonableness and realism.

- (a) Key Personnel and Organizational Structure

Written Information:

DOE will evaluate the proposed Key Personnel and its rationale for any key positions proposed by the Offeror for the successful accomplishment of the work being performed under the contract(s). The proposed Key Personnel will be evaluated for demonstrated leadership; relevant experience and qualifications in performing work similar in size, scope, and complexity to the PWS; and qualifications (e.g. education, certifications, licenses) as presented in the resumes. Failure to submit resumes, with accurate information, and Letters of Commitment in the format shown may result in a lower rating.

DOE will evaluate the Offeror's proposed Key Personnel positions relative to the approach to the management and execution of the work proposed by the Offeror as well as the approach to retention of Key Personnel.

Offerors and Key Personnel are advised that DOE may contact references and previous employers to verify the accuracy of resume information. Information found to be inaccurate may result in a lower rating.

Oral Presentation:

DOE will utilize individual key personnel interviews and a sample problem provided to the entire Key Personnel Team to evaluate the proposed Key Personnel on:

- Quality and effectiveness of the responses
- Understanding and performance in their respective positions and as members of the Offeror's management team
- Understanding of the management challenges posed by the operation of the WIPP and CCP
- Interaction and participation as an integrated management team

Organizational Structure:

DOE will evaluate the Offeror's rationale for the proposed organizational structure relative to: the organizational chart; rationale for organizational structure; roles and responsibilities and lines of authority; corporate officials and board of directors; teaming agreements; major subcontractors; features and benefits of the proposed organization; and organizational responsibilities.

Corporate Officials and Board of Directors: The Offeror shall describe its approach to providing corporate oversight, corporate assurances, and resource commitments to ensure that the proposed organizational structure and Key Personnel effectively manage and accomplish the work contemplated under the resulting contract.

(b) Management Approach

DOE will evaluate the Offeror's approach to managing and operating activities at WIPP. DOE will evaluate the depth, quality, effectiveness, and completeness of the Offeror's proposed approach to performing the work described in the PWS including the Offeror's proposed approach to planning and implementing the WIPP operations, including waste characterization, in the short term (i.e. 2 years)

and long term (i.e. contract period of performance and through the lifecycle of the WIPP operations); proposed approach to research and development initiatives that have the objective of improving the operational efficiency of the WIPP and the National TRU Program; and the Offeror's proposed approach to integrating NTP activities with the national laboratories, subcontractors, other DOE Contractors, and the generating sites.

DOE will evaluate the Offeror's proposed Transition Plan to the extent it provides for safe and orderly transition; minimizes impacts on continuity of operations; defines an effective approach for overcoming barriers; identifies key issues and resolutions, milestones, and commitments; planned interactions with DOE, the incumbent WIPP Contractor, incumbent employees, and other WIPP Contractors; and the implementation schedule identifying milestones and measurable commitments.

DOE will evaluate the Offeror's targets and approach to achieving the Small Disadvantaged Business (SDB) Participation Program Targets.

(c) Relevant Experience

DOE will evaluate the Offeror's relevant experience as follows (including each entity as defined in Section L.16):

Relevant Experience. DOE will evaluate each Offeror (including each entity as defined in Section L.16) for its relevant experience in performing work similar in size, scope and complexity to that described in the PWS. Size, scope and complexity are defined as follows: Size - dollar value and contract duration; scope - type of work; and complexity - performance challenges and risk.

DOE will also evaluate the relevant experience of each of the Offeror's proposed major subcontractors as defined in Section L.16(c) in performing work similar in size, scope, and complexity to the work that the proposed major subcontractors are proposed to perform under the Offeror's approach to the PWS.

If the Offeror is a newly formed entity, DOE will evaluate the experience of the individual entity or entities that comprise the newly formed entity. If the Offeror is a joint venture, LLC, or other similar entity, DOE will evaluate the experience of the entities comprised of joint venture, LLC, or other similar entity.

(d) Past Performance

The Offeror's and its teaming partners, as well as major subcontractors' past performance will be evaluated on the basis of information furnished by the references identified in Section L and any other available sources. The Government will evaluate the quality of performance relative to the scope, size, and complexity to the work described in the solicitation. The Government will consider in its evaluation the degree of relevance, of the Offeror's past performance information. In the case of a newly formed joint venture partners, and LLC. DOE will evaluate the past performance of each member that comprises the newly formed entity, including the past performance for the work proposed to be performed by each entity under the solicitation/PWS as well as past performance in managing and performing the overall work under the solicitation/PWS.

DOE will evaluate major subcontractor(s) past performance commensurate with the portion of the work being performed under the solicitation/PWS.

The Past Performance Reference Information Form, ESH&Q Past Performance Information Form, and Past Performance Information Questionnaire identified in Section L will be used to collect this information.

During its evaluation, the Government will review and consider all past performance information submitted by the Offeror's references, may contact some or all of the references provided by the Offeror, and may solicit past performance information from any other available sources including the Past Performance Information Retrieval System (PPIRS) containing Contractor Performance Assessment Reporting Systems (CPARS). References other than those identified by the Offeror may be contacted and their input may be considered by the Government in the evaluation of the Offeror's past performance. DOE may check readily available Government records including pertinent DOE prime contracts, or commercial references for relevant past performance information. More relevant past performance information as well as more recent past performance information may be given greater consideration.

In the case of an Offeror without a record of relevant past performance or for whom information on relevant past performance is not available, the Offeror will not be evaluated favorably or unfavorably on past performance.

M.4 COST AND FEE EVALUATION

Cost proposals will be evaluated for cost reasonableness, realism, and completeness in accordance with FAR 15.404-1(d). The evaluation will include analysis of the Offeror's proposed transition costs to determine whether the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the methods of performance and materials described in the Offeror's Transition Plan. The Government will determine the most probable cost for the Offeror's proposed transition costs. The most probable cost will not be point scored or adjectively rated.

For purposes of determining the best value to the Government, the evaluated price will be the total of the proposed fee for the five year base term and the five year option, along with the most probable cost for transition. The evaluated price will be considered in accordance with M.5, Basis for Award.

An Offeror that proposes a fee amount that exceeds the maximum prescribed total available award fee of 8.0% may be considered unacceptable for award.

M.5 BASIS FOR AWARD

The Government anticipates the award of a single contract as a result of this solicitation to the responsible Offeror whose proposal is responsive to the solicitation and is determined to be the best value and most advantageous to the Government. Selection of the best value is determined through the process of evaluating strengths and weaknesses of each Offeror's Technical Proposal in accordance with the evaluation criteria stated in Section M.

In determining the best value to the Government, the Technical Evaluation Criteria are significantly more important than evaluated price. Evaluated price is the Government-determined most probable cost for transition plus the proposed total available award fee for the base and option periods. The Government is more concerned with obtaining a superior technical proposal than making an award at the lowest evaluated price. Thus, the closer or more similar in merit that the Offerors' technical proposals are evaluated to be, the more likely the evaluated price may be the determining factor in selection for award. However, the Government will not make an award at a price premium it considers disproportionate to the benefits associated with the evaluated superiority of one technical proposal over another. Evaluated price will not be point scored. The Government will assess whether the strengths and weaknesses between or among competing technical proposals indicate superiority from the standpoint of what the difference might mean in terms of anticipated performance and what the evaluated price to the Government would be to take advantage of the difference.

M.6 FAR 52.217-5 EVALUATION OF OPTIONS (JUL 1990)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).